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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Doc. #AMS–LPS–15–0070]

RIN 0581–AD45

Livestock Mandatory Reporting: Reauthorization of Livestock Mandatory Reporting and Revision of Swine and Lamb Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: On April 2, 2001, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). The LMR program was reauthorized in October 2006 and September 2010. On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) reauthorized the LMR program for an additional 5 years until September 30, 2020, and directed the Secretary of Agriculture (Secretary) to amend the LMR swine reporting requirements. This final rule incorporates the swine reporting revisions contained within the 2015 Reauthorization Act and a minor revision to the lamb reporting requirements under the Agricultural Marketing Act of 1946, USDA Livestock Mandatory Reporting regulations.

DATES: This final rule is effective October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Lynch, Director; Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; AMS, USDA, Room 2619–S, STOP 0252; 1400 Independence Avenue SW., Washington, DC 20250–0251; telephone (202) 720–4868; fax (202) 690–3732; or email *Michael.Lynch@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The 1999 Act was enacted into law on October 22, 1999, [Pub. L. 106–78; 113 Stat. 1188; 7 U.S.C. 1635–1636(i)] as an amendment to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). On April 2, 2001, the AMS Livestock, Poultry, and Seed Program's (LPS) Livestock, Poultry, and Grain Market News Division (LPGMN) implemented the LMR program as required by the 1999 Act. The purpose was to establish a program of easily understood information regarding the marketing of cattle, swine, lambs, and livestock products; improve the price and supply reporting services of the USDA; and encourage competition in the marketplace for livestock and livestock products. The LMR regulations (7 CFR part 59) set the requirements for packers or importers to submit purchase and sales information of livestock and livestock products to meet this purpose.

The statutory authority for the program lapsed on September 30, 2005. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization Act (2006 Reauthorization Act) [Pub. L. 109–296]. The 2006 Reauthorization Act re-established the regulatory authority for the continued operation of LMR through September 30, 2010. On July 15, 2008, the LMR final rule became effective (73 FR 28606, May 16, 2008).

On September 28, 2010, Congress passed the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111–239]. The 2010 Reauthorization Act reauthorized LMR for an additional 5 years through September 30, 2015. On January 7, 2013, the LMR final rule became effective (77 FR 50561, August 22, 2012).

On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) [Pub. L. 114–54] was enacted; it reauthorized the LMR program for an additional 5 years through September 30, 2020, and amended the reporting requirements for swine purchase types and late afternoon swine purchases. On February 29, 2016, AMS published a proposed rule for these swine reporting changes and for changes to lamb reporting requirements as requested by the lamb industry which included new definitions and requirements for packers to report lambs committed for future delivery to the packer and prices of pelts paid to the producer and an amendment to the definition of packer-owned lambs (81 FR 10132, February 29, 2016). The proposed rule included a 60-day comment period. AMS received 11 timely comments. Nine were substantive and relevant and two were outside the scope of regulation.

This final rule incorporates the swine reporting revisions contained within the 2015 Reauthorization Act and the lamb reporting revision to amend the definition of packer-owned lambs as requested by the lamb industry, under the USDA LMR regulations. Based on the comments received, AMS chose not to incorporate in this final rule the proposed reporting revisions concerning lambs committed for future delivery and prices of pelts paid to producers due to the burden increase on the packers affected by this rule and the possible negative implications on U.S. trade within domestic and international markets.

II. Comments and Responses

AMS received nine relevant comments from organizations representing livestock producers and meat packers and processors. A review of AMS responses to the comments follows below.

Swine

Summary of Comments: Two commenters supported reporting negotiated formula purchases and the publication of late afternoon barrow and gilt purchases in reports issued the following day. These commenters noted that these revisions should provide more information about buyer/seller interactions indicating the manner in which swine is marketed and increase the volume of barrow and gilt data able to be published in daily purchase reports.

Agency Response: AMS made no changes.

Lamb—Lambs Committed

Summary of Comments: Two commenters supported the requirement to report lambs committed, one commenter requested clarification concerning the specificity of the number of animals and the date of delivery reported, and four commenters, representing a majority of the entities affected by this requirement opposed this requirement. The opposing commenters requested AMS reconsider this revision. Of the opposing commenters, two stated that the requirement would be overly burdensome and exceed the scope of the LMR program as it could change the manner in which purchase contracts are written and implemented. One commenter stated that commitments or schedules to deliver lambs vary based on factors including feedlot performance, weather, transportation availability, feed availability, producer management, plant capacity, and customer demand for lambs and therefore would be difficult to report. This commenter also stated that the reporting requirement would require a significant amount of recordkeeping to maintain compliance. Other commenters noted that the requirement would provide too much market intelligence about the domestic lamb packing industry regarding packer buying positions and would therefore be detrimental to the U.S. lamb industry putting it at a competitive disadvantage to importers of Australian and New Zealand lamb.

Agency Response: AMS recognizes the value of information this requirement could provide for the industry; however, the domestic and international trade implications raise serious concerns. Therefore, AMS has removed the aforementioned provision for the reporting requirement concerning lambs committed from this final rule.

Lamb—Pelts

Summary of Comments: Two commenters supported the requirement to report lamb pelts noting voluntary reporting of pelt market interactions between packers and pelt processors has become static and no longer indicative of current marketing practices due to consolidation of the lamb packing and pelt processing industries. Furthermore, these commenters noted that the requirement to report volumes and prices for pelts paid to the producer by the packer, instead of the current voluntary practice of providing market interactions between the packer and pelt processor, would provide producers with market information to better determine the whole value of a slaughter lamb. One commenter requested clarification about whether the requirement would apply to each lot of animals or individual animals. Three commenters, representing a majority of the entities affected by this requirement, were opposed to the requirement, noting the increase in burden on the reporting entities with little or no benefit to the industry. These opposing commenters acknowledged the importance of reporting market information for pelts and stressed the point that AMS currently reports the pelt market on a voluntary basis; therefore, they suggested that mandatory pelt reporting would be redundant. Commenters opposing this provision noted that grouping pelts into the proposed classification categories within each lot would be difficult and time-consuming because pelts are sorted by a third-party based on quality characteristics inconsistent with the classification categories in the proposed rule. Also, the commenters opposing the revision suggested that compliance with the requirement would be subjective and difficult to verify since there are no standard pelt grades used consistently throughout the industry. Two of the opposing commenters explained that pelts are typically sent to another part of a plant after removal and therefore impossible to match pelt information with specific animals. Another commenter expressed that considering the consolidation of the U.S. pelt processing industry, this provision to require detailed pelt reporting, and thereby increase market transparency, could negatively affect trade by providing a competitive advantage to international buyers of pelts.

Agency Response: AMS recognizes the value of information on the pelt market this provision could provide for the industry. However, the concerns raised by the commenters about the burden and difficulty in meeting this requirement with limited benefit to the industry cannot be overlooked. Therefore, AMS has removed the aforementioned provision for the reporting requirement concerning pelts from this final rule.

Lamb—Packer-Owned Lambs

Summary of Comments: One commenter supported the revision of the definition of packer-owned lambs to include animals a packer owns for at least 28 days immediately before slaughter. The commenter noted this revised definition would help address the need to amend current reporting for lambs in order to provide useful market information readily understood by producers and improve AMS market reporting services.

Agency Response: AMS made no changes.

III. Final Revisions

Under the LMR regulations, certain cattle, swine and lamb packers and processors, and lamb importers are required to report purchases of livestock for slaughter and sales of meat products to AMS. This final rule amends the LMR regulations for swine reporting and lamb reporting requirements as described below.

Swine

The swine reporting requirement revisions within this final rule are authorized through the 2015 Reauthorization Act. This final rule minimally increases the reporting burden for swine packers.

Swine packers are required to report purchase data by four types of purchase: negotiated purchase, other market formula purchase, swine or pork market formula purchase, or other purchase arrangement. A 'negotiated purchase' is a cash or spot market purchase by a packer under which the base price for the swine is determined by seller-buyer interaction and agreement on a delivery day; and the swine are scheduled for delivery to the packer not more than 14 days after the date on which the swine are committed to the packer. An 'other market formula purchase' is a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or pork product, and includes a formula purchase in a case where the price formula is based on one or more futures or options contracts. A 'swine or pork market formula purchase' is a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or pork product, other than a future or option for swine, pork, or pork product. An 'other purchase arrangement' is a purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine.

The 2015 Reauthorization Act amended the swine reporting requirements, subpart C of part 59, by adding an additional purchase type definition for negotiated formula purchases of swine, which requires swine packers to report swine purchased on a negotiated formula basis as a separate purchase type. As defined in § 59.200, the term "negotiated formula" is a swine or pork market formula purchase under which the formula is determined by negotiation on a lot-by-lot basis, and swine are scheduled for delivery to the packer not later than 14 days after the date on which the formula is negotiated and swine are committed to the packer. Packers will be required to report any swine purchased in this manner as a negotiated formula purchase.

Adding a negotiated formula purchase type provides market participants with more specific information about the various purchase methods used in the daily marketing of swine and a better understanding of the marketplace concerning formulated prices and spot negotiated prices.

Packers are required to report purchase data for barrows and gilts for a morning report not later than 10 a.m. Central time and an afternoon report not later than 2 p.m. Central time. The information to be reported is the same for the morning and afternoon reports and includes an estimate of the total number of barrows and gilts purchased by each type of purchase, the total number of barrows and gilts purchased, the base price paid for all negotiated purchases of barrows and gilts, and the base price paid for each type of purchase of barrows and gilts other than through a negotiated purchase. This information must be submitted for all covered transactions that occur within one-half hour of each specified reporting time. Packers completing transactions during the half-hour prior to the previous reporting time report those transactions at the next prescribed reporting time.

The 2015 Reauthorization Act directed the Secretary to include in the morning and afternoon daily reports for the following day, the purchase information for any barrows and gilts purchased or priced after the afternoon reporting time of the current reporting day. Under this final rule, the required information reported remains the same for the morning and afternoon reports; however, the morning report requirements under § 59.202 now requires packers to report purchase data for barrows and gilts purchased after 1:30 p.m. Central time of the previous reporting day and up to that time of the reporting day for the total number of barrows and gilts purchased, the base price paid for all negotiated purchases of barrows and gilts, and the base price paid for each type of purchase of barrows and gilts other than through a negotiated purchase. Under this final rule, the LMR regulations for the afternoon reporting requirements remain unchanged. The inclusion of the late afternoon swine purchase information in the following day's reports increases the volume of barrows and gilts shown in the daily morning and afternoon purchase reports and better represents the daily market conditions.

Lamb

Since the implementation of LMR in 2001 and its subsequent revisions, the U.S. lamb industry has become more concentrated at all levels of the production system through consolidation, impacting AMS' ability to publish certain market information in accordance with the confidentiality provisions of the 1999 Act. To help address this issue, the Livestock Marketing Information Center, an independent provider of economic analyses concerning the livestock industry, conducted an analysis of the current LMR program for lamb reporting in 2013 at the request of the American Sheep Industry Association, an industry organization representing sheep producers throughout the U.S.[1] Based on this study, recommendations were proposed to amend the current LMR regulations to improve the price and supply reporting services of AMS and better align LMR lamb reporting requirements with current industry marketing practices. These recommendations are the basis for the lamb reporting change as proposed by the lamb industry for this final rule.

The revision to the lamb reporting requirements, subpart D of part 59, is an amended definition under § 59.300 for the term "packer-owned lambs." This final rule amends the definition for the term "packer-owned lambs" to cover lambs owned by a packer for at least 28 days immediately before slaughter.

Appendices

The last section of this document contains three appendices; the proposed rule contained four. As explained in section II above, based on the comments received, AMS chose not to incorporate in this final rule the proposed reporting revisions concerning lambs committed for future delivery and prices of pelts paid to producers. Therefore, AMS deleted appendix B in its entirety, removed all references to lamb forms in appendices C and D, and re-lettered appendices C and D as appendices B and C, respectively. Appendix A lists the forms used by swine packers required to report information under the LMR program. Appendix B provides a description of the forms, while appendix C contains the actual reporting forms. These appendices will not appear in the Code of Federal Regulations.

With this final rule, all form and guideline identification numbers associated with the LMR program are updated to reflect the change in the program name from the AMS Livestock and Seed Program (LS) to the AMS Livestock, Poultry, and Seed Program (LPS); therefore, form number designations are changed from LS–XXX to LPS–XXX. This change to the form numbers is included in the request for an extension of a currently approved information collection for OMB 0581–0186 (Commodities Covered by the Livestock Mandatory Reporting Act of 1999); and in the appendices of this final rule.

Amendments to two swine reporting forms, LPS–118 Swine Prior Day Report and LPS–119 Swine Daily Report, were made to include the new purchase type under this final rule, "negotiated formula purchase." One form for swine reporting, LPS–119 Swine Daily Report, requires an amendment to the description of the form to include the reporting of the late afternoon purchased barrows and gilts from the previous reporting day in the following reporting day's daily reports, as shown in appendix B.

IV. Classification

Executive Order 12866 and Executive Order 13563

This final rule is being issued by USDA with regard to the LMR program in conformance with Executive Orders 12866 and 13563.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process for this action.

Regulatory Flexibility Act

In General. This final rule was reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5

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[1] Hearing to Review Reauthorization of the Livestock Mandatory Reporting Act: Hearing before the Subcommittee on Livestock and Foreign Agriculture of the Committee on Agriculture, House of Representatives, 114th Cong., 1st sess. (Serial No. 114–12). (2015). Retrieved from GPO's Federal Digital System: *https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94372/pdf/CHRG-114hhrg94372.pdf.*

U.S.C. 601–612). The purpose of RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. Information is only available directly from those entities required to report under these regulations and exists nowhere else. Therefore, this final rule does not duplicate market information reasonably accessible to the USDA.

Objectives and Legal Basis. The objective of this final rule is to improve the price and supply reporting services of the USDA in order to encourage competition in the marketplace for swine and lambs as specifically directed by the 2015 Reauthorization Act and the lamb industry requested revisions as authorized through the 1999 Act and these regulations, as described in detail in the background section.

Estimated Number of Small Businesses. For this regulatory flexibility analysis, AMS utilized the North American Industry Classification System (NAICS), which is the standard used by federal statistical agencies to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. This analysis compares the size of meat packing companies to the NAICS standards to determine the percentage of small businesses within the industry affected by this final rule. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.[2]

This final rule amends the reporting requirements for swine packers by adding a new purchase type for negotiated formula purchases of barrows and gilts, and including late afternoon purchases of barrows and gilts from the previous reporting day in the morning and afternoon daily reports of the current reporting day. For swine packers, this final rule applies only to federally inspected swine processing facilities that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years and a person that slaughtered an average of at least 200,000 sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant or person that did not slaughter swine during the immediately preceding 5 calendar years, it would be considered a packer if the Secretary determines the processing plant or person should be considered a packer under this subpart after considering its capacity.

Approximately 36 individual pork packing companies representing a total of 55 individual plants are required to report information to AMS. Based on the NAICS size standard for meat packing companies with 500 or less employees, AMS estimates that 24 of these 36 pork packing companies would be considered small businesses, representing 27 individual plants that are required to report. The figure of 55 plants required to report represents 8.9 percent of the federally inspected swine plants in the U.S. The remaining 91.1 percent of swine plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

To implement the swine reporting changes in this final rule, AMS estimated the total annual burden on each swine packer to be $108, which includes the annual share of initial startup costs of $415. There is no annual cost increase associated with electronically submitting data or for the storage and maintenance of electronic files submitted to AMS due to this final rule.

For lamb reporting, this final rule amends the definition of the term "packer-owned lambs" to include lambs owned by a packer for at least 28 days immediately before slaughter.

Under the 2015 Reauthorization Act, a lamb packer includes any person with 50 percent or more ownership in a facility that slaughtered or processed an average of 35,000 lambs during the immediately preceding 5 calendar years, or that did not slaughter or process an average of 35,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity.

The LMR regulations require 10 lamb packers to report information, which is less than 2 percent of all federally inspected lamb plants. Therefore, approximately 98 percent of lamb packers are exempt from reporting information by this final rule. Based on the NAICS size standard for meat packing companies with 500 or less employees and its knowledge of the lamb industry, AMS estimates that all lamb packing companies currently required to report under LMR would be considered small businesses. As this final rule amends a definition and does not impose additional burdens, AMS estimates no costs to implement the lamb reporting changes in this final rule. There is no annual cost increase associated with electronically submitting data or for the storage and maintenance of electronic files submitted to AMS due to this final rule.

Projected Reporting. The LMR regulations require the reporting of specific market information regarding the buying and selling of livestock and livestock products. This information is reported to AMS by electronic means and this final rule does not affect this requirement. Electronic reporting involves the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS. Once the required information has been entered into the AMS database, it is aggregated and processed into various market reports which are released according to the daily and weekly time schedule set forth in the LMR regulations. As an alternative, AMS also developed and made available web-based input forms for submitting data online as AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system.

Each packer and importer required to report information to USDA under LMR must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required to maintain and make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock, and to maintain these records for a minimum of two years. Packers and importers are not required to report any other new or additional information they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain.

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[2] North American Industry Classification System, code 311611 for abattoirs.

In addition, AMS has not identified any relevant federal rules currently in effect that duplicate, overlap, or conflict with this rule. Professional skills required for recordkeeping under the LMR regulations are not different than those already employed by the reporting entities. Reporting is accomplished using computers or similar electronic means. This final rule does not affect the professional skills required for recordkeeping already employed by the reporting entities. Reporting will be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this rule.

Alternatives. This final rule requires swine and lamb packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. The 1999 Act and these regulations exempt the vast majority of small businesses by the establishment of slaughter, processing, and import capacity thresholds.

AMS recognizes that most of the economic impact of this final rule on those small entities required to report involves the manner in which information must be reported to the Secretary. However, in developing this final rule, AMS considered other means by which the objectives of this final rule could be accomplished, including reporting the required information by telephone, facsimile, and regular mail. AMS believes electronic submission to be the only method capable of allowing AMS to collect, review, process, aggregate, and publish reports while complying with the specific time-frames set forth in the 1999 Act and regulation.

To respond to the concerns of smaller operations, AMS developed a web-based input form for submitting data online. Based on prior experience, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. Accordingly, AMS developed such a system for program implementation.

Additionally, to further assist small businesses, AMS may provide for an exception to electronic reporting in emergencies, such as power failures or loss of Internet accessibility, or in cases when an alternative is agreeable between AMS and the reporting entity.

Other than these alternatives, there are no other practical and feasible alternatives to the methods of data transmission that are less burdensome to small businesses. AMS will work actively with those small businesses required to report and minimize the burden on them to the maximum extent practicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), we included the changes in reporting and recordkeeping requirements for 7 CFR part 59 associated with this action into the program's request for an extension of a currently approved information collection for OMB 0581–0186 (Commodities Covered by the Livestock Mandatory Reporting Act of 1999).

Executive Order 12988

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. Section 259 of the 1999 Act prohibits states or political subdivisions of a state to impose any requirement that is in addition to, or inconsistent with, any requirement of the 1999 Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products. In addition, the 1999 Act does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act of 1921 (7 U.S.C. 181 *et seq.*); administer, enforce, or collect voluntary reports under the 1999 Act or any other law; or access documentary evidence as provided under Sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Civil Rights Review

AMS reviewed the potential civil rights implications of this final rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons who are employees of the entities that are subject to this regulation. This final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this final rule does not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This final rule was reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a federal statute to preempt state law only when the statute contains an express preemption provision. This final rule is required by the 1999 Act. Section 259 of the 1999 Act, Federal Preemption states, "In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products."

Prior to the passage of the 1999 Act, several states enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular state. However, since the federal LMR program was implemented on April 2, 2001, these state programs are no longer in effect. Therefore, there are no federalism implications associated with this rulemaking.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS considered the potential implications of this final rule to ensure this regulation does not have substantial and direct effects on Tribal governments and was found to not have significant Tribal implications.

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Lamb, Livestock, Sheep, Swine.

For the reasons set forth in the preamble, 7 CFR part 59 is amended as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

■ 1. The authority citation for 7 CFR part 59 continues to read as follows:

Authority: 7 U.S.C. 1635–1636i.

■ 2. Amend § 59.200 by:

■ a. Adding a definition for "Negotiated formula purchase" in alphabetical order;

■ b. Revising the definition of "Other purchase arrangement"; and

■ c. Revising paragraphs (3) and (4) and adding paragraph (5) in the definition of "Type of purchase".

The additions and revisions read as follows:

§ 59.200 Definitions.

* * * * *

Negotiated formula purchase. The term "negotiated formula purchase" means a swine or pork market formula purchase under which:

(1) The formula is determined by negotiation on a lot-by-lot basis; and

(2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the formula is negotiated and swine are committed to the packer.

* * * * *

Other purchase arrangement. The term "other purchase arrangement" means a purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, negotiated formula purchase, or other market formula purchase; and does not involve packer-owned swine.

* * * * *

Type of purchase. * * *

(3) A swine or pork market formula purchase;

(4) Other purchase arrangement; and

(5) A negotiated formula purchase.

* * * * *

■ 3. Amend § 59.202 by revising paragraphs (b)(2) through (4) to read as follows:

§ 59.202 Mandatory daily reporting for barrows and gilts.

* * * * *

(b) * * *

(2) The total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day through each type of purchase;

(3) All purchase data for base market hogs purchased since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day through negotiated purchases;

(4) All purchase data for base market hogs purchased through each type of purchase other than negotiated purchase since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined.

* * * * *

■ 4. Amend § 59.300 by revising the definition for "Packer-owned lambs" to read as follows:

§ 59.300 Definitions.

* * * * *

Packer-owned lambs. The term "packer-owned lambs" means lambs that a packer owns for at least 28 days immediately before slaughter.

* * * * *

Dated: August 5, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–19040 Filed 8–10–16; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[NRC–2015–0286]

Operating Philosophy for Maintaining Occupational and Public Radiation Exposures as Low as Is Reasonably Achievable

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG) 8.10, "Operating Philosophy for Maintaining Occupational Radiation Exposures as Low as is Reasonably Achievable." This revision describes methods and procedures that the NRC staff considers acceptable for maintaining radiation exposures to employees and the public as low as is reasonably achievable (ALARA).

DATES: Revision 2 to RG 8.10 is available on August 11, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0286 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document using the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0286. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Document collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 2 to RG 8.10 and the regulatory analysis may be found in ADAMS under Accession Nos. ML16105A136 and ML15203B408, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Casper Sun, telephone: 301–415–1646, email: *Casper.Sun@nrc.gov;* and Harriet Karagiannis, telephone: 301–415–2493; email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 2 of RG 8.10 was issued with a temporary identification of Draft Regulatory Guide, DG–8033. Revision 2 addresses changes identified since Revision 1 was issued in September 1975 (the NRC issued Revision 1–R in May 1977). In 1991, the NRC promulgated amendments to part 20 of title 10 of the *Code of Federal Regulations* (CFR) (56 FR 23360; May 21, 1991). The 1991 rulemaking included substantive amendments to 10

CFR part 20 as well as a renumbering of those regulations. As such, this revision to the regulatory guide aligns with the regulatory structure of current 10 CFR part 20 by updating the regulatory guide's 10 CFR part 20 cross-references.

In addition, this revision includes additional guidance from operating ALARA experience since 1975. It provides more details describing management responsibilities to ensure commitment to ALARA.

II. Additional Information

The NRC published a notice of availability of DG–8033 in the **Federal Register** on December 24, 2015 (80 FR 80395), for a 60-day public comment period. The public comment period closed on February 22, 2016. The public comments on DG–8033 and the NRC staff responses to the public comments are available in ADAMS under Accession Number ML16105A137.

III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting

This regulatory guide provides updated guidance on the methods acceptable to the NRC staff for complying with the NRC's regulations associated with ALARA. The regulatory guide applies to current and future applicants for, and holders of:

- Operating licenses for nuclear power reactors under 10 CFR part 50.
- approvals issued under subpart B, C, E, and F of 10 CFR part 52 ("protected applicants and licensees").
- licenses issued under 10 CFR part 70 to possess or use, at any site or contiguous sites subject to licensee control, a formula quantity of strategic special nuclear material, as defined in 10 CFR 70.4.
- operating licenses for nuclear non-power reactors under 10 CFR part 50.
- specific domestic licenses to manufacture or transfer certain items containing byproduct material under 10 CFR part 32.
- specific domestic licenses of broad scope for byproduct material under 10 CFR part 33.
- licenses for industrial radiography under 10 CFR part 34.
- licenses for medical use of byproduct material under 10 CFR part 35.
- licenses for irradiators under 10 CFR part 36.
- licenses for well logging under 10 CFR part 39.
- licenses for source material under 10 CFR part 40.
- certificates of compliance for packaging of radioactive material under 10 CFR part 71.
- licenses for independent spent fuel storage installations under 10 CFR part 72.

The backfitting provisions in 10 CFR 50.109, 70.76, and 72.62, and the issue finality provisions in 10 CFR part 52 do not apply to holders of licenses under 10 CFR parts 31, 32, 33, 34, 35, 36, 39, 40, or 71, or to holders of licenses for non-power reactors under 10 CFR part 50, unless those licensees also have an NRC regulatory approval under 10 CFR parts 50 or 52 (for a nuclear power reactor), 70, or 72. In addition, the issuance of this regulatory guide would not constitute backfitting under 10 CFR 50.109, 70.76, or 72.62, and would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the "Implementation" section of this regulatory guide, the NRC has no intention of initiating any regulatory action that would require the use of this regulatory guide by current holders of 10 CFR part 50 operating licenses, 10 CFR part 52, subpart B, C, E, or F approvals, 10 CFR part 70 licenses, or 10 CFR part 72 licenses.

If a licensee protected by a backfitting or issue finality provision (a "protected licensee") voluntarily seeks a license amendment or change, and (1) the NRC staff's consideration of the request involves a regulatory issue directly relevant to this revised regulatory guide and (2) the specific subject matter of this regulatory guide is an essential consideration in the NRC staff's determination of the acceptability of the licensee's request, then the NRC staff may request that the licensee either follow the guidance in this regulatory guide or provide an equivalent alternative process that demonstrates compliance with the underlying NRC regulatory requirements. Such a request by NRC staff is not considered backfitting as defined in 10 CFR 50.109(a)(1), 70.76(a)(1), or 72.62(a), or a violation of any applicable finality provisions in 10 CFR part 52.

If a protected licensee believes that the NRC is either using this regulatory guide or requesting or requiring the protected licensee to implement the methods or processes in this regulatory guide in a manner inconsistent with the discussion in the Implementation section of this regulatory guide, then the protected licensee may file a backfit appeal with the NRC in accordance with the guidance in NRC Management Directive 8.4, "Management of Facility-Specific Backfitting and Information Collection" (ADAMS Accession No. ML12059A460); and NUREG–1409, "Backfitting Guidelines" (ADAMS Accession No. ML032230247).

Dated at Rockville, Maryland, this 3rd day of August, 2016.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2016–18767 Filed 8–10–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0002; Directorate Identifier 2011–NE–42–AD; Amendment 39–18610; AD 2016–16–12]

RIN 2120–AA64

Airworthiness Directives; Continental Motors, Inc. Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Continental Motors, Inc., (CMI) San Antonio (formerly known as Airmotive Engineering Corp. (AEC)), replacement parts manufacturer approval (PMA) cylinder assemblies marketed by Engine Components International Division (ECi). On July 17, 2015, AEC was purchased by CMI and is now operating as "Continental Motors—San Antonio." These cylinder assemblies are used on all CMI model –520 and –550 reciprocating engines, and on all other CMI engine models approved for the use of model –520 and –550 cylinder assemblies, such as the CMI model –470 when modified by supplemental type certificate (STC). This AD was prompted by reports of multiple cylinder head-to-barrel separations and cracked and leaking aluminum cylinder heads. This AD requires removal of the affected cylinder assemblies, including overhauled cylinder assemblies, according to a phased removal schedule. We are issuing this AD to prevent failure of the cylinder assemblies, which could lead to failure of the engine, in-flight shutdown, and loss of control of the airplane.

DATES: This AD is effective September 15, 2016.

ADDRESSES: For service information identified in this AD, contact Continental Motors, Inc., San Antonio, 9503 Middlex Drive, San Antonio, TX 78217; phone: 210–820–8100; Internet: *http://www.continentalsanantonio.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0002.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0002; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jurgen E. Priester, Aerospace Engineer, Delegation Systems Certification Office, FAA, Rotorcraft Directorate, 10101 Hillwood Parkway, Fort Worth, TX 76177; phone: 817–222–5190; fax: 817–222–5785; email: *jurgen.e.priester@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

August 12, 2013—NPRM

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain CMI San Antonio replacement PMA cylinder assemblies marketed by ECi. These assemblies are used on CMI model –520 and –550 reciprocating engines, and all other CMI engine models approved for the use of models –520 and –550 cylinder assemblies such as the CMI model –470 when modified by STC. The NPRM published in the **Federal Register** on August 12, 2013 (78 FR 48828) (referred to herein after as the "August 12, 2013, NPRM"). The August 12, 2013, NPRM proposed to require initial and repetitive inspections, immediate replacement of cracked cylinder assemblies, and replacement of cylinder assemblies at reduced times-in-service (TIS) since new. The August 12, 2013, NPRM also proposed to prohibit the installation of affected cylinder assemblies into any engine.

September 26, 2013–March 12, 2014—Posting Technical Documents/Extension of Comment Period/Initial Regulatory Flexibility Analysis (IRFA)

We received several hundred comments to our August 12, 2013, NPRM. In response to this high-level of public interest, we undertook several actions to help the public understand and provide further comment on our proposed rule. These actions included:

- Extending the comment period to the August 12, 2013, NPRM;
- publishing an IRFA; and
- adding several technical documents that were posted to Docket No. FAA–2012–0002 (see Addresses section of this final rule for information on locating the docket) on September 20, 2013.

Documents added to the docket include:

(1) FAA Safety Recommendations 08.365, 08.366, and 11.216, which were written against the subject ECi cylinder assemblies;

(2) NTSB Safety Recommendation A–12–7, also written against the subject ECi cylinder assemblies;

(3) The original ECi AD worksheet for 2011–NE–42–AD, which documents the reasons for the proposed rule;

(4) A list of separations of ECi cylinder assemblies;

(5) A white paper[1] on failures of ECi cylinders by the FAA Chief Scientific and Technical Adviser (CSTA) for Engine Dynamics;

(6) Figures showing ECi Dome Separation Failures;

(7) A briefing on "ECi Cylinder Head Failures on Continental IO 520 & 550 Engines"; and

(8) FAA Policy Memorandum on "Risk Assessment for Reciprocating Engine Airworthiness Directives," dated May 24, 1999.

We notified the public of these actions on September 26, 2013, via the **Federal Register** (78 FR 59293). In that notification, we extended the comment period for the August 12, 2013, NPRM to December 11, 2013. This extension allowed the public additional time to comment on our August 12, 2013, NPRM and the additional information we had added to the docket.

We also determined that we needed to add to the docket a detailed regulatory flexibility analysis to estimate the effects of the proposed rule on small business entities. We published an Initial Regulatory Flexibility Analysis in Docket FAA–2012–0002 on March 12, 2014 (79 FR 13924).

September 3–4, 2014—Challenge Team's Review of August 12, 2013, NPRM

Because the response to our August 12, 2013, NPRM was so negative—we received over 500 comments, most disagreeing with the NPRM—we established a Challenge Team to review our proposed AD. The Challenge Team was an independent, multi-disciplinary team, consisting of three FAA CSTAs, FAA Aircraft Certification Service (AIR) managers, and other FAA technical experts from all four Directorates.

The Challenge Team reviewed the technical information that formed the basis for our proposed AD and the public comments we had received concerning our proposal. The CSTA for Aircraft Safety Analysis also independently computed a new risk assessment using the earlier failure reports, and the additional failure reports that we received from the public as comments to our August 12, 2013, NPRM.

Based on their review of this data and the new risk assessment of failures of affected cylinder assemblies, the Challenge Team determined that an AD was still required. But, they suggested changes to make compliance less aggressive and substantially reduce cost. Their recommended changes included revising the compliance schedule in favor of a phased removal schedule, clarifying that overhauled cylinder assemblies are included in the proposed phased removal schedule, eliminating the reporting requirement for removed cylinder assemblies, and removing the requirement for initial and repetitive inspection.

January 8, 2015—First Supplemental Notice of Proposed Rulemaking (SNPRM)

We adopted the Challenge Team's recommendations, and we then published them as an SNPRM in the **Federal Register** on January 8, 2015 (80 FR 1008) (referred to herein after as the "January 8, 2015, SNPRM"). The January 8, 2015, SNPRM proposed to modify the schedule for removal of the affected cylinder assemblies, added that overhauled affected cylinder assemblies be removed within 80 hours, eliminated a reporting requirement, and removed a requirement for initial and repetitive inspections.

We also responded in our January 8, 2015, SNPRM, to the several hundred comments that we received to the August 12, 2013, NPRM. Many of these comments were repetitious, so we grouped the comments and provided our responses to the different groups, depending on the nature of the comment. For example, some comments claimed that airplanes can operate safely with a separated cylinder head; others suggested that pilot error was causing cylinder head separations; and others recommended adopting less stringent compliance requirements. Each of these groups received our response to the group's comment.

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[1] An authoritative report that informs readers about a complex issue.

June 9, 2015—Meeting With National Transportation Safety Board (NTSB)

The NTSB, in its comments to our August 12, 2013, NPRM; January 8, 2015, SNPRM; and in its Safety Recommendation A–12–07, did not fully support our approach to resolving the unsafe condition that is the subject of this final rule. Therefore, we met with the NTSB on June 9, 2015 to understand the technical basis for their recommendation and their technical objections to our proposed AD. At this meeting, we presented the NTSB the technical information upon which we based our AD as amended. Information that was reviewed included failure reports, the risk assessment by the FAA's CSTA for Aircraft Safety Analysis, FAA safety recommendations, and the data supporting our conclusion that field inspections had an insufficient probability of cylinder failure detection.

The NTSB noted in this meeting that Safety Recommendation A–12–7, and the NTSB's comments to the August 12, 2013, NPRM and the January 8, 2015, SNPRM, were based on the information available to them at that time. The NTSB also indicated it would reassess its recommendation and comments to our proposed rule based on the presentations and the supporting data that we had presented.

June 23, 2015—Additional Technical Documents Posted

We received additional comments to our August 12, 2013, NPRM and our January 8, 2015, SNPRM, requesting that we provide additional information that supports this AD. Commenters also requested that we identify the data that we relied on in drafting this AD and to explain why that data supported our conclusion that an unsafe condition exists. Based on these comments, we concluded that further additional public participation in our proposed AD was appropriate. Specifically, we concluded that we would post to the docket the additional technical information responsive to the comments. So, on June 23, 2015, we posted the additional technical information to Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). These documents provide further technical rationale for this AD. This additional technical information included:

(1) The risk analysis process conducted by the FAA's CSTA for Aircraft Safety Analysis—referenced in Docket No. FAA–2012–0002 as the "Proposed Airworthiness Directive for ECi Cylinders Risk Analysis Process," referred to herein as the "risk analysis";

(2) A risk analysis using the Small Airplane Risk Analysis (SARA) methods used by the FAA's Small Airplane Directorate (SAD)—referenced in Docket No. FAA–2012–0002 as "SARA Worksheet Systems/Propulsion";

(3) A June 2011, presentation by AEC to the FAA concerning its ECi cylinder assemblies;

(4) A list of ECi cylinder assembly failure reports consisting of only those reports where both cylinder serial number and time in service are included in the reports;

(5) A list of additional failures of ECi cylinder assemblies reported by a maintenance organization; and

(6) AEC Technical Report 1102–13, dated April 30, 2011.

August 28, 2015—2nd SNPRM

We published a second SNPRM in the **Federal Register** on August 28, 2015 (80 FR 52212, referred to herein after as the "August 28, 2015, SNPRM"). The August 28, 2015, SNPRM retained the compliance requirements proposed by the January 8, 2015, SNPRM. We published the August 28, 2015, SNPRM to provide the public a final opportunity to comment on the proposed AD and the additional technical documentation we had added to the docket on June 23, 2015.

Also, since many commenters had cited NTSB support for their positions, we wanted to clarify our rationale for disagreeing with the compliance actions proposed by the NTSB in its Safety Recommendation A–12–7, and the NTSB's comments to the August 12, 2013, NPRM and the January 8, 2015, SNPRM.

The NTSB did submit a final comment to our August 28, 2015, SNPRM, that was posted to the docket on November 23, 2015. In the NTSB's final comment, the NTSB indicated that it now considers that our proposed compliance actions satisfy the intent of Safety Recommendation A–12–7. The information we covered with the NTSB, including copies of FAA presentations to the NTSB, were subsequently posted to Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket) on April 6, 2016.

Comments

Introduction

We have, through the August 12, 2013, NPRM; the September 26, 2013, posting of additional information; our extension of the August 12, 2013, NPRM comment period; the January 8, 2015, SNPRM; and August 28, 2015, SNPRM, given the public the opportunity to participate in developing this AD. The public, as noted already, has participated deeply in this rule making; providing hundreds of comments.

This final rule includes our responses to any previously unaddressed comments to the August 12, 2013, NPRM and to the January 8, 2015, SNPRM, that we may have left without response, and to the August 28, 2015, SNPRM.

To organize comments and facilitate their review, we again grouped like comments and responses. These groupings in this final rule's comments section are:

(1) Comments to withdraw or revise the SNPRMs for technical reasons—these comments, and the resulting groupings, were similar to those we used in responding to the August 12, 2013, NPRM. They include, for example, requests to withdraw the SNPRM because the commenters claim that ECi cylinder assemblies are not unsafe; airplanes can operate safely with a separated cylinder head; or the root cause of cylinder failure is unknown.

(2) Comments to the FAA's risk assessment processes and policies—these comments generally asserted that the SNPRMs should be withdrawn because the FAA had not appropriately followed its risk assessment processes and policies in determining that the failure of ECi cylinder assemblies represents an unsafe condition.

(3) Comments to the FAA's rulemaking processes—these comments generally requested that the SNPRMs be withdrawn, alleging that the FAA had failed to follow its rulemaking processes and was adopting a rule that is "arbitrary and capricious."

(4) Comments to the cost of compliance—these comments indicated that the cost of compliance to this AD was higher than the FAA has estimated and will have a substantial effect on small entities.

(5) Administrative comments—these were generally comments that did not pertain to the substance of this AD, such as requests for names and phone numbers of FAA personnel involved in this rulemaking.

(6) Support for the SNPRMs—these were comments in support of issuing the SNPRMs.

A. Comments To Withdraw or Revise the SNPRMs for Technical Reasons

Request To Withdraw the SNPRMs Because ECi Cylinder Assemblies Are Not Unsafe

Comment. Several organizations and individuals, commenting to the August 12, 2013, NPRM, commented also to the January 8, 2015, and August 28, 2015, SNPRMs, that the affected ECi cylinder assemblies have an equivalent, or lower, failure rate than that of cylinder assemblies manufactured by the original equipment manufacturer (OEM). The commenters also indicated that there have been no failures of ECi cylinder assemblies in the last 3 years. These commenters request the FAA withdraw this AD because they believe that the ECi cylinder assemblies are not unsafe.

Response. We disagree. The rate of separation for the affected ECi cylinder assemblies is at least 32 times greater than that of OEM cylinder assemblies over the same period. Although there are approximately four times as many OEM cylinder assemblies in service than ECi cylinder assemblies, the ECi cylinder assemblies suffered more cylinder head separations than OEM cylinder assemblies since 2004. This data is available for review in Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). In addition, we have continued to receive field reports of failures of the affected cylinders in the past three years. We did not withdraw the August 28, 2015, SNPRM.

Comment. Commenters also questioned the validity of the data that the FAA used to justify the proposed AD.

Response. We interpret the comment as suggesting that the data used to justify the rule is not valid. We disagree. We used warranty reports from ECi and RAM Aircraft, which is a major overhauler of CMI engines, STC holder for an increased horsepower version of the affected model engine, and the largest user of the affected ECi cylinders. We also used service difficulty reports (SDRs), and other field service reports regarding ECI cylinder separations. We did not withdraw the August 28, 2015, SNPRM.

Comment. The IPL Group LLC (IPL Group) commented that the FAA has mischaracterized ''quality enhancements'' in production as ''design changes.'' IPL Group noted that ECi had applied experience gained during manufacturing, as well as through service feedback, to make quality improvements in production and the changes made to the design data were not due to design deficiencies.

Response. We disagree. We correctly stated that ECi has made increases in the dome transition radius through cylinder serial number 33697, and has made incremental increases in the head-to-barrel interference fit at least through cylinder serial number 61177 (see Airmotive Engineering Technical Report 1102–13) to address the two identified inherent design deficiencies associated with the effected cylinder assemblies. These changes are design changes. We did not withdraw the August 28, 2015, SNPRM.

Comment. RAM Aircraft commented that when it submitted its December 9, 2013, comment, it calculated the likelihood of a cylinder separation. RAM Aircraft indicated it provided a significant amount of data that proves that the likelihood of a cylinder separation is ''extremely remote.'' RAM commented that at that time their data showed one cylinder separation for every: 21,808 multi-engine aircraft flight hours, or 172 average years of active service; and 42,057 single engine aircraft flight hours, or 455 average years of active service. Further, that the fleet of aircraft using the cylinders subject to the January 8, 2015, SNPRM have continued to fly for an additional 14 months since December 9, 2013. RAM Aircraft indicated that there is no doubt that both the 21,808 multi-engine aircraft flight hour number, and the 42,057 single engine aircraft flight hour number, would both be now much larger, thereby, further reducing the likelihood of a cylinder separation.

Response. We disagree. RAM Aircraft's data does not substantiate its claimed failure rate. Without knowing the total number of hours flown on all affected cylinders, it is not possible to accurately calculate an hours-based failure rate. This data is not available for general aviation aircraft. We, therefore, find RAM Aircraft's estimate to be unreliable. We did not withdraw the August 28, 2015, SNPRM.

Comment. RAM Aircraft also indicated that a statement by the FAA in the January 8, 2015, SNPRM regarding numbers of failures of affected cylinder assemblies was grossly misleading. RAM Aircraft assumes that the FAA is referring to reports entered via the SDR system. RAM Aircraft indicated that it has provided evidence in an earlier comment that not every piece of information in the SDR system can be taken at face value. With respect to this SNPRM, RAM suggested that it is very important to distinguish between the ''SNPRM failure modes'' (quotations not in original comment) and other types of ''nuisance'' cracks that are common occurrences in all manufacturer's air-cooled aircraft cylinders. The SNPRM failure modes do not include cracks between spark plug holes, valve seats, injector ports, etc. There is no doubt that the ''hundreds of failures'' referenced by the FAA were never researched to determine which were of the SNPRM failure mode and which were of the ''nuisance'' variety.

Response. We disagree. Our response in the January 8, 2015, SNRPM is not misleading. On the contrary, under-reporting of cylinder assembly cracks in the SDR system further reinforces the need for this AD. Further, the FAA did not include the SDR failure reports referred to by the commenter as of the ''nuisance'' variety in the list of separations that were used to substantiate the need for this AD. We did not base this AD on nuisance cracks in the affected cylinder assemblies. We did not withdraw the August 28, 2015, SNPRM.

Comment. One commenter stated that the separated cylinders that were determined to be the precipitating root cause events for the two fatal accidents cited by the FAA in the January 8, 2015, SNPRM were overhauled cylinders, so they therefore should not be considered in the determination as to whether or not the proposed corrective action should be implemented.

Response. We disagree. The ECi cylinder heads, P/N AEC 65385, of the separated cylinder assemblies that precipitated the two referenced fatal accidents were of the same type design and within the same affected cylinder assembly serial number range as are used in new ECi cylinder assemblies. The cast and then machined aluminum cylinder head shrink band region has the predominant features that define the final interference fit of the overall cylinder assembly, not the steel barrel. This is further supported by the fact that the design changes that ECi made to the interference fit were accomplished by modification of the cylinder head. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Holdings commented that the FAA should withdraw the August 28, 2015 SNPRM because the FAA failed to establish that the affected product, *i.e.,* the ECi cylinder assemblies, do not meet the established minimum safety standards established by 14 CFR part 33.

Response. We disagree. The operational history of the affected ECi cylinder assemblies established that the affected ECi cylinder assemblies present an unacceptable compromise to safety, an unsafe condition, when installed in operating aircraft engines. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Holdings also stated that the "same unsafe condition" that is addressed by this AD is present in the cylinders of all manufacturers and that the FAA failed to consider similar failures of the OEM cylinders.

Response. We disagree. The affected ECi PMA cylinders have separated at a significantly higher rate than the OEM cylinders over the same service period since the ECi PMA cylinders entered service. ECi itself identified two root causes for the separations. See AEC Technical Report 1102–13 in Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket) which recommends withdrawal from service of the affected ECi cylinders. We compared the number of separations of these affected ECi PMA cylinders to the number of OEM separations over the same service period, since the ECi PMA cylinders entered service in meaningful numbers. Over the same period of time the affected ECi PMA cylinders and OEM cylinders were in service, the ECi cylinders experienced eight times the number of OEM separations, even though only one-quarter as many ECI cylinders were in service as the OEM's. Further, the SDR database does not reveal similar separation rates or similar failure modes for OEM cylinders. Therefore, we have no reason to regard the OEM cylinder assemblies as subject to the same or similar unsafe condition. We did not withdraw the August 28, 2015, SNPRM.

Request To Withdraw the SNPRMs Because Airplanes Can Operate Safely With a Separated Cylinder Head

Comment. Several commenters indicated that we should not issue this AD because airplanes can continue to operate safely even after a cylinder head separation.

Response. We disagree. An in-flight cylinder head separation is an unsafe condition that presents multiple secondary effects. For example, in-flight fire and loss of aircraft control. Accident data confirms that separated cylinders have also been a precipitating event in fatal accidents. Therefore, the safety consequences represented by a cylinder head separation in flight are significant, and represent an unsafe condition appropriate for an AD. We did not withdraw the August 28, 2015, SNPRM.

Comment. Several commenters added that airplane engines are designed and certified to safely operate with one failed cylinder.

Response. We disagree. Applicants are not required to show that their engines are designed to operate with one cylinder failed or with a separated cylinder, nor that doing so constitutes safe operation of an engine. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Aerospace commented that the docket contains evidence from RAM Aircraft that valid and verifiable testing establishes that a head-to-barrel separation results in less than 20 percent power loss to the engine.

Response. We disagree. The RAM Aircraft testing that is included in Docket FAA–2012–0002 only quantified the horsepower output per cylinder. The RAM Aircraft testing was of an uninstalled engine in a test cell and RAM Aircraft did not attempt to assess the impact of reduced engine horsepower output on airplane level performance. We estimate that a 20% reduction in engine horsepower on a single-engine airplane results in a nearly 40% reduction in aircraft rate of climb, which is a hazardous condition. It is also a potentially hazardous condition for twin-engine airplanes due to the resultant asymmetric thrust condition. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Aerospace indicated that FAA guidance material does not define this condition as "hazardous" in the certification process.

Response. We interpret the comment to be that the FAA has no definition of hazardous event that includes loss of one cylinder in a six-cylinder engine, within the engine certification regulations (14 CFR part 33). We agree. The certification process does not define "hazardous events." The FAA establishes through the engine certification process the minimum standards that an engine needs to meet to be considered airworthy. For example, § 33.19 establishes durability standards that are designed to minimize the development of an unsafe condition between overhaul periods. These minimum safety standards must also be met by PMA parts, either through establishing identicality or through test and computation. FAA Policy PS–ANE100–1997–00001, provides guidance for the certification of PMA applications for reciprocating engine critical, highly stressed or complex parts, including, but not limited to crankshafts and cylinder heads. We did not withdraw the August 28, 2015, SNPRM.

Comment. RAM Aircraft commented that it has run tests that substantiate and document the power loss as a "minor power loss" in the event of a cylinder separation.

Response. We interpret the comment to be that any power loss from cylinder head separation is only minor. We disagree. The loss of one cylinder's power would equate to approximately a 17 to 20% reduction in engine horsepower output. Further, loss of a cylinder at critical phases of flight, for example, during climb-out where like here, the failure is at increased probability of occurring, produces a power loss sufficient to result in a 40% reduction in airplane rate of climb. This would constitute a hazardous condition during a critical phase of flight like departure/climb. We did not withdraw the August 28, 2015, SNPRM.

Comment. RAM Aircraft suggested that this minor power loss would be classified as a "minor hazard," based on guidance from the FAA's "Policy Statement on Risk Assessment for Reciprocating Engine Airworthiness Directives" (PS–ANE100–1999–00006). According to the FAA policy statement, minor hazards are candidates for AD action only when the probability of the event is very high.

Response. We disagree. FAA policy classifies service problems that do not result in a significant power loss, such as a partial power loss, rough running, pre-ignition, backfire, single magneto failures, as "minor." We found that cylinder separations results in a 17 to 20% reduction in engine horsepower output results in an approximately 40% reduction in airplane excess power, which translates into a 40% reduction in airplane rate of climb. This constitutes a hazardous condition that is not a "minor hazard." We did not change this AD based on this comment.

Comment. RAM Aircraft commented that Appendix VI of the SAD Airworthiness Directives Manual Supplement includes examples of conditions that potentially have a "minor" affect. The loss of one engine (multi-engine aircraft) is listed as a condition with a "minor" effect. Given the "minor" effect of the loss of one engine and the likelihood of the cylinder separation being extremely remote, then this AD should not be issued against multi-engine aircraft.

Response. We disagree. By comparing the risk analysis computed by the CSTA for Aircraft Safety Analysis with either the Small Airplane Risk Analysis guidelines used by the SAD or the Engine and Propeller Directorate (E&PD) Continued Airworthiness Assessment Process (CAAP) Handbook guidelines, demonstrates that an AD is needed for both single and twin-engine aircraft. We did not withdraw the August 28, 2015, SNPRM.

Comment. RAM Aircraft commented that they are not aware of any substantiated fact of a "fire," or any other significant consequence of a cylinder head separation. Further, RAM Aircraft noted that in its May 12, 2014, comment, it had documented the research it had done to refute the "rumor" of a fire resulting from a cylinder head separation of an ECi cylinder.

Response. We disagree. RAM Aircraft itself submitted data to the FAA indicating that a fire could occur from cylinder head separation. FAA requested to see that information. FAA's subsequent visit to RAM Aircraft confirmed that a failed cylinder caused an in-flight fire on a Cessna 414 airplane. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Aerospace cited FAA documents that indicate that the design of an aircraft engine, for reciprocating engines, should incorporate mitigating features. For example, Danbury quoted SAD Standards Staff (ACE–110) Memorandum, dated May 6, 1986, and an E&PD Standards Staff (ANE–110) memorandum, dated May 24, 1997.

Response. We agree. However, the regulatory requirement for a designer to mitigate a possible reciprocating engine failure prior to certification is different than correcting an unsafe condition found to exist after certification. This AD addresses an unsafe condition—cylinder head separation, found after certification. A regulatory requirement to mitigate in the aircraft design an engine failure is not the subject of this AD. We did not withdraw the August 28, 2015, SNPRM.

Comment. IPL Group commented that we were misusing the term "catastrophic" when describing the effects of potential cylinder failures.

Response. We disagree. As to the use of "catastrophic," we did not use the term in the August 12, 2013, NPRM, the two SNPRMs, or in this final rule AD. We did not change the August 28, 2015, SNPRM based on this comment.

Comment. IPL Group argued that a cylinder head separation does not cause an unsafe event and that there is "zero evidence" in Docket No. FAA–2012–0002 to support the showing that a failed cylinder causes an unsafe condition.

Response. We disagree. Cylinder separations can cause partial or complete engine failure which can cause a subsequent loss of power and control of the airplane. Loss of control of the airplane may result in the loss of the airplane and injuries or death. Additionally, we note the NTSB has stated that cylinder head separations could result in a loss of control of the airplane (see NTSB's comment to "Docket No FAA–2008–0052; Directorate Identifier 2008–NE–01–AD, dated September 25, 2009"). We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Holdings commented that the FAA had not provided any information to substantiate the FAA's position that cylinder separations have a "significant" effect on airplane safety or that cylinder separations would result in a fire.

Response. We disagree. The impact of a cylinder separation in-flight is an unacceptable compromise to safety. To clarify this point, we changed the AD to use "unacceptable." We disagree that cylinder head separations might not result in fire. Cylinder separations can result in engine failure and/or fire. As an example, on November 29, 1987, a Piper PA–46 airplane experienced a cylinder head separation followed by an in-flight fire. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Holdings also stated that the FAA did not issue a similar AD against the OEM cylinder assemblies because the OEM manufactured more such cylinder assemblies.

Response. We disagree. The FAA did not mandate actions similar to those specified in this AD against the OEM cylinders because the OEM cylinders do not have the inherent design deficiencies that the ECi PMA cylinders have. Also, the service history of the OEM cylinders indicates that the OEM separation rate is approximately 32 times lower than the ECi cylinders. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Holdings further commented that ADs are never justified for any cylinder manufacturer.

Response. We interpret the comment as suggesting that we should not issue an AD when engine design deficiencies related to cylinders are found. We disagree. Cylinders are engine parts whose structural failure can result in a degradation to or total loss of, engine power output, and loss of control of an airplane. Cylinder separations aloft can also cause an in-flight fire. We will exercise our regulatory arm to issue ADs when we determine doing so is necessary to resolve an unsafe condition in a product. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Aerospace commented that 14 CFR part 33.43 requires assessment of crankshaft vibration for one cylinder not firing because the condition is not an engine failure event condition.

Response. We disagree. As we noted in our January 8, 2015, SNPRM, 14 CFR part 33 does not require continued safe operation following a cylinder separation or following any other engine structural failure. Section 33.43(d), addressing the engine vibration survey of § 33.43(a), requires assessment of crankshaft vibration for an engine that has one cylinder that "is not firing." We require vibration testing with a critical cylinder inoperative because it is a failure condition where stresses may exceed the endurance limit of the crankshaft material. We need to know the speed ranges where the excessive stresses occur so operational information may be provided to flight crews so they can avoid these speed ranges when a cylinder is inoperative. We did not withdraw the August 28, 2015, SNPRM.

Request To Withdraw the SNPRMs Because Root Cause of Cylinder Failure Is Unknown

Comment. Several commenters indicated that the FAA has failed to identify the root cause(s) of cylinder head separations.

Response. We disagree. We have identified the root cause of cylinder failure as design deficiencies inherent in the affected ECi cylinder assemblies. These ECi cylinder assemblies have two inherent design deficiencies: Insufficient dome radius and insufficient head-to-barrel interference fit. These design deficiencies are identified in AEC Technical Report 1102–13, dated April 30, 2011, that we posted to Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). We did not withdraw the SNPRMs.

Comment. Danbury Aerospace commented that root cause analysis is absolutely essential to determining compliance with regulations and if an unsafe condition has been created. Therefore the agency has not properly identified the unsafe condition.

Response. We disagree. We identified the unsafe condition in the engine: Cylinder head separation. The purpose of this AD is to correct that unsafe condition. We also identified that cylinder head separations are due to at least two inherent design deficiencies. All cylinders prior to S/N 33697 have insufficient dome transition radius, and all cylinders prior to S/N 61177 insufficient head-to-barrel interference fit. ECi characterized both of these as "inherent design deficiencies" in its AEC Technical Report 1102–13. We did not withdraw the August 28, 2015, SNPRM.

Request To Withdraw the SNPRMs Because Pilot Error Is Causing Cylinder Head Separations

Comment. Danbury Aerospace and Danbury Holdings commented that cylinder head separations involving the ECi cylinder assemblies affected by this AD were caused by excessive CHTs, presumably caused pilot error, rather than by design deficiencies of the cylinder assemblies.

One operator observed that operators who use the ECi cylinder assemblies and operate them within limits and with good instrumentation are not having issues. This operator noted that everyone, with the exception of the FAA, believes that overheating beyond CHT limits by operators has a direct effect on cylinder head separation.

Response. We disagree. Although pilot error may cause excessive CHT, we have no data to suggest it is the cause of the unsafe condition that is the subject of this AD. If pilot error results in excessive CHT, which leads to cylinder head separation, then we would expect to see similar damage in engines with other than ECi cylinder assemblies installed where the pilots exceeded the same limitation(s). However, we do not have any such data. Also, we have no evidence that either intentional or inadvertent exceedance of CHT limits has caused cylinder separation. Further ECi identified several design deficiencies in AEC Technical Report 1102–13, dated April 30, 2011.We did not withdraw the SNPRMs.

Request To Withdraw the SNPRMs Because of the Risk of Maintenance Errors

Comment. Several commenters commented that the FAA should withdraw the SNPRMs because the removal and replacement of affected cylinder assemblies before time between overhaul (TBO) would result in maintenance errors that would adversely affect safety. For example, IPL Group indicated that replacement of the cylinder assemblies would likely result in events of main bearings losing clamp-up and turning, resulting in cylinder through-bolt and flange stud failures, which would likely result in total engine failure.

Response. We disagree. Our regulatory framework presumes that maintenance will be performed correctly by experienced personnel authorized by the FAA to return aircraft to service in an airworthy condition. Further, we have not observed any negative effects on safety due to removal of these cylinder assemblies during maintenance. Also, cylinder removal and replacement is a maintenance action addressed in engine maintenance manuals. We did not withdraw the SNPRMs.

Request To Justify 80-Hour Removal Requirement for Overhauled Cylinder Assemblies

Comment. Danbury Aerospace and Danbury Holdings requested that the FAA provide evidence (including engineering analysis) supporting its conclusion that overhauled cylinder assemblies should be removed within 80 hours after the effective date.

Response. We interpret the comment to be that the commenters disagree that the phased removal plan required by this AD is appropriate. We disagree. This AD mandates a phased removal of affected cylinders with the intent to retire all affected cylinders by initial TBO. The FAA recognizes that some cylinders in service may already have exceeded their initial TBO. Metal fatigue damage is cumulative, and the longer a cylinder head remains in service, the more likely it will fail due to one of the inherent design deficiencies. Overhauled cylinders have likely experienced more load and temperature cycles than lower time cylinders and the total time in service since new of overhauled cylinders often cannot be determined. Our determination of 80 hours is supported by our Challenge Team's findings and our risk analysis that we uploaded to FAA Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). We did not change this AD based on this comment.

Comment. Danbury Aerospace and Danbury Holdings also stated that the FAA had not substantiated that the overhaul of a cylinder does not reduce the existing fatigue damage that a cylinder may have incurred while in service.

Response. We disagree. Fatigue strength of metal alloys operated at high temperatures continuously decreases with cycles until failure. This is particularly true for aluminum alloys, including the aluminum alloy used to cast cylinder heads. Metallic structural elements that are operated at high temperatures are more susceptible to time dependent fatigue. The overhaul of a cylinder assembly does not reverse the fatigue damage that had been previously accumulated in the aluminum cylinder head casting. We did not change the AD based on this comment.

Request To Revise Applicability

Comment. Danbury Holdings commented that the FAA has no evidence that all cylinders through S/N 61176 are at risk for separation in the first thread due to insufficient head-to-barrel interference fit.

Response. We disagree. The SDR database and other field reports document instances of first-thread failures of cylinders manufactured to design data applicable to all cylinders prior to S/N 61177. For this reason, all cylinders through S/N 61176 are subject to the corrective actions of this AD. We did not change this AD based on this comment.

Comment. One commenter stated that he has an O–470 engine converted by P. Ponk Aviation to the equivalent of an O–520 engine. He indicated that those engines should not be affected by this AD.

Response. We disagree. The affected S/N cylinders are installed on –470 engines, as well as the –520 and –550 engine models. Any engine that uses one of these affected cylinders is at risk. We have received at least one report of a separation of these affected S/N cylinders on –470 engines. Although the unmodified –470 engines have lower engine horsepower output, their brake mean effective pressure (BMEP) is actually higher than that of the –520 and –550 engines. BMEP is proportional to the ratio of horsepower per cubic inch of displacement. Therefore, the actual operating stresses in the same cylinder wall are even higher when these same cylinders are installed in an unmodified –470 engines than it would be for either the –520 or the –550 engines. The P. Ponk Aviation STC increases the displacement of the unmodified –470 engine to –520 cubic inches by installing the –520 cylinders on the –470 engine. Given that no valid sensitivity analysis exists showing the relationship of BMEP to fatigue life of these cylinders, and since the crack propagation rate is also unknown, we have included all the –470 engines, including those modified by the P. Ponk Aviation STC, in the effectivity of this AD. We did not change this AD based on this comment.

Request To Adopt Less Stringent Compliance Requirements

Comment. AOPA, RAM Aircraft, as well as operators and private citizens, requested that we adopt less stringent requirements than those in the proposed AD. The commenters indicated that the affected cylinder assemblies should be inspected at regular intervals, but removed at TBO. For example, one commenter suggested recurring inspections every 60 hours. Several commenters cited the NTSB in support of its recommendation. RAM Aircraft commented that the FAA may be jumping to conclusions by eliminating these inspections. RAM Aircraft noted that the failure of a compression/soap test to detect a particular crack in a cylinder assembly on several occasions does not mean that the test will fail to detect cracked cylinders on most occasions. By their very nature and design compromises, *i.e.,* steel barrels to contain the forces of combustion combined with lighter cylinder head alloys to reduce weight so that aircraft engines have commercial viability and value, and the harsh conditions, altitudes, and temperatures in which they operate, reciprocating aircraft engine cylinders will inevitably crack. RAM Aircraft indicated that there is no question but that some cylinders are going to crack, and that therefore, they must be properly operated, maintained, and inspected.

Response. We disagree. Repetitive inspections until TBO, as suggested by the commenters, do not adequately address the unsafe condition in this particular case. Repetitive inspections would not detect cracks until they have already progressed completely across the cylinder head wall thickness.

Several operators and mechanics have reported that they successfully passed the compression/soap test with a partially separated cylinder. Others have reported that they successfully passed the compression/soap test and then experienced an in-flight separation before the next scheduled 50-hour inspection.

Therefore, we conclude that these tests are not sufficiently reliable. Also, engine overhaul is not a requirement for all operators. Therefore, tying the proposed recurrent inspection to engine overhaul would not resolve the unsafe condition. Based on its comment to the August 28, 2015, SNPRM, we know that the NTSB now considers this rule consistent with the rationale they have provided in the past in support of NTSB Safety Recommendation A–12–7 regarding these affected cylinder assemblies (Reference NTSB Comment FAA–2012–0002–0653, dated September 24, 2015 in Docket FAA–2012–0002). We did not change this AD based on this comment.

Comment. One commenter indicated it was incorrect to apply the same requirement to remove the cylinders at specified intervals to different CMI engine models. He noted, for example, that the TSIO–520–J engine that is allowed to produce 36 inches of manifold pressure and 310 horsepower will produce less stress on a cylinder head than a TSIO–520–NB engine that is allowed 41 inches of manifold pressure and 325 horsepower, as installed on a Cessna 414 airplane.

Response. We disagree. Service history indicates that the affected cylinder assemblies have cracked on –470, –520, and –550 engine models. The AD, therefore, applies to all affected CMI –470, –520 and –550 engine models. We have no engineering analysis or test data to justify varying compliance times by engine model or applying the corrective actions of this AD to only the higher power engines. We did not change this AD based on this comment.

Comment. Danbury Aerospace observed that the average number of cylinder assemblies, P/N AEC 631397, in the serial number range in the January 8, 2015, SNPRM that are still in operation have less than 500 hours left to TBO. Danbury Aerospace indicated that the early removal of these cylinders is not justified by a statistical analysis developed in accordance with the E&PD CAAP Handbook.

Response. We disagree. We do not know the exact number of total hours TIS for each affected cylinder assembly. We have no data to support the claim that the existing fleet of cylinder assemblies already has accumulated 1,200 or more hours TIS. Service history also shows that most of the separations occurred well before initial TBO. Therefore, removal of the affected cylinder assemblies before TBO is appropriate. We did not change this AD based on this comment.

Comment. Danbury Holdings commented that the FAA had not provided evidence that there have been separations within the originally proposed 50-hour recurrent compression test/soap inspection interval.

Response. We disagree. We received several field reports of cylinder separations occurring within 50 hours of passing either the originally proposed 50-hour recurrent compression test/soap inspection in the August 12, 2013, NPRM. SDR report No. SQP2011F00000 was submitted by a part 135 operator who operated a Cessna T210N with an affected ECi cylinder assembly installed. The operator reported that on September 9, 2011, that affected ECI cylinder head separated at the 5th cooling fin on-head. At the time of the failure, the engine and failed cylinder had 817.6 hours time since overhaul/time since new, and its last compression check inspection was at 19.2 hrs. prior. Other field reports also document separated cylinders (for example, see SDR Report 2010FA0000179) that recently passed the compression test/soap inspections. We did not change this AD based on this comment.

Comment. One commenter commented that, based on his experience, ECi has an aluminum head cracking issue and that these cylinders seem to crack more than CMI cylinders. The commenter further indicated that he believed the number of cylinder failures is underreported in the SDR database. The commenter further noted that in his 30 plus years of aircraft maintenance experience, he has never seen a cylinder failure rate this high. The commenter welcomed an AD that requires these cylinders to be inspected at around 100 hours and the reports of cracks sent to an FAA database.

Response. We note the comment. We agree that the ECi failure rate is much higher than the OEM failure rate over the same field service period and that cylinder cracks are under-reported. For example, many of the RAM failures listed in the docket were not reported under the SDR system or as required by 14 CFR 21.3. We did not change this AD based on this comment.

Comment. RAM Aircraft commented that, based on its previous comments, the FAA should withdraw the SNPRMs. RAM Aircraft recommended that the FAA consider education and requiring inspections of all reciprocating airplane engine cylinders on the terms and conditions the FAA determines to be appropriate.

Response. We disagree. Our analysis indicates that an AD is required to resolve the unsafe condition presented by installed affected ECi cylinder assemblies. We did not withdraw the SNPRMs based on this comment.

Comment. One commenter suggested that users of a JPI or other engine monitoring system should be subject to a different compliance interval.

Response. We disagree. As noted previously, the root cause of these cylinder failures are design deficiencies. The affected cylinders may fail without overtemping. Therefore, use of an engine monitoring system like JPI would be insufficient to detect the unsafe condition. We did not change this AD based on this comment.

Request To Use Mandatory Service Bulletin Instead of This AD

Comment. One commenter requested that the FAA use a mandatory service bulletin instead of this AD to implement corrective action.

Response. We disagree. Requiring a manufacturer to issue a mandatory service bulletin is outside the scope of the FAA's authority. We did not change this AD based on this comment.

B. Comments to the FAA's Risk Assessment Processes and Polices

Request That the FAA Follow Its Own Risk Assessment Policies and Guidance

Comment. Multiple commenters, including Danbury Aerospace, Danbury Holdings, and the Aeronautical Repair Station Association (ARSA) commented that the FAA did not follow its own risk assessment policies and guidance, such as FAA Order 8110.107A, Monitor Safety/Analyze Data (MSAD), dated October 1, 2012, and FAA Order 8040.4A, Safety Risk Management Policy, dated April 30, 2012, and the E&PD CAAP Handbook, dated September 23, 2010.

Response. We interpret this comment as a comment that we failed to follow FAA Order 8110.107A, FAA Order 8040.4A, and the CAAP Handbook. We disagree. We performed the process as required by FAA Order 8110.107A, Monitor Safety/Analyze Data (MSAD), dated October 1, 2012, to analyze data and determine corrective action for continued operational safety issues. We acquired the failure event data from the MSAD, SDR, NTSB databases, ECi, and outside sources. We conducted a hazard criteria analysis where we filtered the data to identify relevant events. We performed a qualitative preliminary risk assessment and determined that this safety problem required corrective action. We performed risk analyses in conjunction with the E&PD risk assessment criteria. We identified that the ECi model separations have two inherent design deficiencies: Insufficient dome radius and insufficient head-to-barrel interference fit. Finally, we coordinated with our Corrective Action Review Board, which determined and agreed to the proposed corrective action in our August 12, 2013, NPRM.

Later, as part of the Challenge Team's meeting in September, 2014, the CSTA for Aircraft Safety performed a risk analysis that confirmed the need for this AD and shaped its compliance plan. We compared the results of the CSTA's risk analysis to the guidelines used by the SAD in its SARA and to the guidelines in the E&PD's CAAP Handbook and determined that an AD is required.

FAA Order 8040.4A requires a risk assessment methodology as outlined in the Order. FAA Order 8040.4A notes that the safety risk is a composite of two factors: The potential "severity" or worst possible consequence(s) or outcome of an adverse event that is assumed to occur, and also the expected frequency of occurrence or likelihood of occurrence (failure rate) for that specific adverse event. Each of these factors is assessed independent of the other and then entered as separate inputs into a risk matrix that yields an overall level of risk for the event.

We performed the risk assessment required by FAA Order 8040.4A and concluded that this AD was necessary. Therefore, our August 12, 2013, NPRM, as revised by the January 8, 2015 SNPRM, and as republished on August 28, 2015, are consistent with FAA Order 8040.4A, FAA Order 8110.107A, and the CAAP Handbook. We did not change this AD based on this comment.

Comment. Commenters, including Danbury Holdings, commented that the FAA should not have included the failure rate of the affected ECi cylinders in the FAA risk assessments that were used to substantiate the need for the corrective actions in this AD. Danbury Holdings indicated that the failure rate is irrelevant to the unsafe condition.

Response. We disagree. We did not use the failure rate in the risk analysis, however, we used the number of reported failures. A risk analysis involves using past data; both successful operation as well as failures (including cracks), to develop a relationship between part parameters, including age and usage, and risk of failure. Therefore, our use of failures was appropriate in this risk analysis. We did not change this AD based on this comment.

Comment. Danbury Aerospace commented that the FAA ignored its own standards for what constitutes an unsafe condition and therefore has failed to identify one.

Response. We disagree. The FAA followed its standard risk analysis processes in determining that the unsafe condition represented by the affected ECi cylinder assemblies exists. 14 CFR part 39 prescribes that we issue an AD when an unsafe condition exists in a product and that condition is likely to exist or develop in other products of the same type design. We did not change this AD based on this comment.

Comment. Danbury Holdings commented that the basis for the FAA's risk analysis is seriously flawed because the unsafe condition must be the basis for the failure, not one unsubstantiated fatality.

Response. We disagree. The unsafe condition in the engine presented by the presence of affected ECi cylinders is the basis of this AD. We did not change this AD based on this comment.

Comment. Danbury Holdings further commented that the FAA had failed to establish a connection between the cylinder separation issue addressed by this AD and the official reports of the two fatal accidents that the FAA references.

Response. We disagree. Reports by the Bahamas Department of Civil Aviation and the NTSB establish that these accidents in the Bahamas and in Swanzey, New Hampshire involved separated ECi cylinders (see Report AAIPU# A10–01312 and NTSB Accident Report No. NYC02FA178, respectively). We have determined that the separation of the affected ECi cylinder assemblies represents an unsafe condition. We are not required to establish any further connection with these accidents. We did not change this AD based on this comment.

Comment. Danbury Holdings added that the FAA should not have included the fatal accident in the Bahamas in the FAA's risk assessments because the NTSB full narrative for that accident (ERA11WA008) made no mention of a cylinder separation.

Response. We interpret the comment as the fatal accident in the Bahamas is not relevant to this AD. We disagree. As noted in the previous comment response, we have determined that the separation of the affected ECi cylinder assemblies, as occurred in the accident in the Bahamas, represents an unsafe condition. We did not change this AD.

Comment. Danbury Holdings also stated that the root cause of the other fatal accident, the Swanzey, New Hampshire, accident (see NTSB Accident Report No. NYC02FA178) that the FAA included in its risk assessments was unsafe and improper operation of the airplane by the pilot not cylinder separation.

Response. We disagree. As noted in the preceding comment discussion, we have determined that the separation of the affected ECi cylinder assemblies, as occurred in the accident in Swanzey, New Hampshire, represents an unsafe condition and is therefore relevant to this AD. We did not change this AD based on this comment.

Comment. Danbury Aerospace added that the accident in the Bahamas should not be included in the FAA's risk analysis because: (1) It did not concern a U.S.-registered aircraft and therefore cannot be used in this rulemaking; (2) loss of control and uncontrolled flight was cited as the cause; and (3) even if the accident could be included, it does not meet hazard level thresholds required for rulemaking.

Response. The commenter presents three comments, which have three parts. We disagree with all three parts. As to part one, the Bahamas accident involved a U.S.-type certificated product, an engine with affected ECi cylinders installed. Therefore, the product is the proper subject of this AD. As to part two, the accident involved an engine with an ECI cylinder separation, a failure of a part of the engine, during flight. A cylinder separation during flight represents an unsafe condition in the engine. Therefore, our action in issuing this AD is appropriate. As to the part three, the cylinder failure presented a hazard to the engine and an unsafe condition, and therefore, meets the threshold for an AD. The need for this AD was confirmed by comparing the result of the risk analysis to the guidelines in the SAD's SARA and the E&PD's CAAP Handbook. We did not change this AD based on this comment.

Request That the FAA Define Guidelines Used To Define an Unsafe Condition

Comment. Danbury Holdings commented that the FAA had not defined the guidelines that it used to establish the existence of an unsafe condition.

Response. We interpret the comment to be a request to identify what guidance defines an unsafe condition. The comment therefore, is not to the technical merits of this AD, but a request for general guidance. As such, a response is unnecessary per the Administrative Procedures Act (APA), and we recommend that the commenter seek his answer through a direct request to the FAA Aircraft Certification Service or Flight Standards Division. We did not change this AD based on this comment.

Request To Withdraw the August 28, 2015, SNPRM Because Supporting Documents Do Not Support Issuing This AD

Comment. Danbury Holdings commented that the documents provided by the FAA in Docket No. FAA–2012–0002 do not support issuance of this AD. The supporting documents referred to by Danbury Holdings are: (1) The risk analysis conducted by the FAA's CSTA for Aircraft Safety Analysis; (2) a risk analysis using the Small Airplane Risk Analysis (SARA) methods; (3) a June 2011, presentation by Airmotive Engineering to the FAA concerning its ECi cylinder assemblies; (4) a list of ECi cylinder assembly failure reports consisting of only those reports where both cylinder serial number and time in service are included in the reports; (5) a list of additional failures of ECi cylinder assemblies reported by a maintenance organization; and (6) Airmotive Engineering Corporation Technical Report 1102–13, dated April 30, 2011.

Response. We disagree. The supporting documents that Danbury Holdings referred to, identified above, support that the FAA followed its process and were used to help determine that an unsafe condition exists. We have also uploaded additional documents to Docket No. FAA–2012–0002 on June 23, 2015 (see **ADDRESSES** section of this final rule for information on locating the docket).

The risk analysis performed by the FAA's CSTA for Aircraft Safety Analysis, recommends removal and replacement of the affected ECi cylinder assemblies as specified in this AD. The SARA applied to failures of ECi cylinder assemblies confirms that an AD is necessary. AEC Technical Report 1102–13 states that a root cause for the first thread separations was an inherent design deficiency in the form of insufficient head-to-barrel design interference fit. AEC Technical Report 1102–13 recommended withdrawing these cylinder assemblies from service. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Holdings commented that that the FAA's risk analyses and other technical information were "flawed, improperly applied, and replete with unsubstantiated conclusions."

Response. The commenter failed to provide any examples of FAA technical information that was flawed, improperly applied, or replete with unsubstantiated conclusions. Without those details, we are unable to consider the comment as having technical merit. Accordingly, we interpret the comment as a general objection to the need for the AD. We disagree. Our Challenge Team applied the risk assessments by the FAA's CSTA for Aircraft Safety Analysis, against the SAD's SARA guidelines and the E&PD's CAAP guidelines and independently concluded that an AD is required to mitigate the unsafe condition presented by installed affected ECi cylinder assemblies. We presented both risk assessments in Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). We did not change this AD based on this comment.

Comment. Danbury Holdings commented that it found no relationship between the risk analysis using SARA methods and any analysis or conclusion provided by the agency in this rulemaking. We interpret Danbury Holding's comment as suggesting that no relationship exists between the risk analysis using SARA methods and any analysis or conclusion provided by the agency in this rulemaking.

Response. We disagree. In comments to the August 12, 2013, NPRM some commenters requested that we use the SARA to determine if an AD was warranted. We used the SARA, and it confirmed the need for an AD. We did not change this AD based on this comment.

Comment. Danbury Holdings commented that RAM Aircraft had concluded, through its own risk analysis, that "the probability of a cylinder separation is extremely remote" and that "historical data and information thus far evident leads to the conclusion that there has been no physical discomfort to pilots or passengers and no damage to any aircraft as a result of the subject cylinders."

Response. We interpret the comment as two parts; first, that our risk assessment reached a wrong conclusion, and second, that a cylinder head separation does not result in any discomfort to pilots or passengers, or damage to the aircraft. We disagree. FAA Order 8040.4A, "Safety Risk Management Policy", dated April 30, 2012, FAA Order 8110.107A, "Monitor Safety/Analyze Data," and the guidance in Engine & Propeller Directorate memorandum "Risk Assessment for Reciprocating Engine Airworthiness Directives," PS–ANE–100–1999–00006, dated May 24, 1999, direct how we do a risk assessment.

We analyze safety risk, per FAA Order 8040.4A, as a composite of two factors: The potential "severity" or worst possible consequence(s) or outcome of an adverse event that is assumed to occur, and also the "expected frequency of occurrence" for that specific adverse event. FAA Order 8040.4A directs us to assess both factors independently, then enter each as separate inputs into a risk matrix. The matrix yields an overall level of risk for the event. The overall risk is then categorized as either "Unacceptable Risk," "Acceptable Risk with Mitigation," or "Acceptable Risk." The corrective action(s), if any, is driven by the assessed overall risk. Table C–1 of Appendix C of FAA Order 8040.4A defines five levels of severity and Table C–2 defines five levels of event frequency that are used in the determination of composite risk.

The FAA classification for the "severity" of an engine cylinder head separation event, per FAA Order 8040.4A, is "hazardous" for both single-engine and light-twin airplanes for several reasons. Cylinder head separations can significantly reduce the power of the airplane such that under some conditions it may not be able to safely takeoff and climb out. It could also create a dangerous asymmetric thrust condition for twin-engine airplanes. If the separation occurs in cruise flight, the airplane may have insufficient excess power to continue safe flight at any altitude. Cylinder head separations have also caused in-flight fires. These are all unsafe conditions that warrant a "hazardous" severity level for risk assessment purposes.

Table C–2 in FAA Order 8040.4A defines "extremely improbable" as "So unlikely that it is not expected to occur, but it is not impossible." It defines "extremely remote" as "Expected to occur rarely." It defines "Remote" as "Expected to occur infrequently." It defines "probable" as "Expected to occur often." Finally, it defines "frequent" as "expected to occur routinely."

Service history failure reports indicate that in a population of 43,000 cylinders, that 1 of every 1,000 cylinders could separate on average; either in the dome radius or the first thread. A single-engine airplane has six of these cylinders, so the actual risk of a separation of any one of those six cylinders for any given airplane is 6/1,000: 1 of every 166 engines. Similarly, a twin-engine airplane will have 12 cylinders, so the risk of experiencing a separation of one cylinder on a twin-engine aircraft is twice that of a single engine, 12/1,000, 1 of every 83 twin-engine airplanes that use these model cylinders.

Separation event under-reporting occurs. This is evidenced by RAM Aircraft's submittal of 23 additional reported failures of the subject ECi cylinders after the August 12, 2013 NPRM was issued. Photos of these failures are available in Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). The calculated separation rate, therefore, is likely higher than what we used in our analysis. Also based on service experience, we expect more ECi cylinder head separations in the future. Therefore, we concluded that the most appropriate assessment for the frequency of occurrence for these cylinder separations is "Remote C"; "Expected to occur infrequently."

Figure C–1 of FAA Order 8040.4A is a risk matrix that yields an overall risk based on the severity classification and the assessed frequency of occurrence. Using the FAA severity classification of "hazardous" and the FAA assessed frequency of occurrence "Remote C", yields an overall risk that is "unacceptable." The corrective actions required by this final rule AD are based on and consistent with this overall risk assessment.

We, therefore, disagree with claims by RAM Aircraft and other commenters that a cylinder head separation will have a negligible effect on airplane safety. Also, several documented in-flight fires were precipitated by a cylinder head separation. We did not change this AD based on this comment.

Comment. Danbury Holdings also commented that AEC Technical Report 1102–13 was "disavowed" by AEC [now CMI San Antonio] since it was obtained under questionable circumstances and has since been proven incorrect given its predictions did not come to fruition.

Response. We disagree. AEC originally provided the analysis to the FAA when it was considering a service bulletin for the affected ECi cylinder assemblies. ECi requested the FAA return or destroy ECi Technical Report 1102–13 after they learned the FAA was considering an AD. We found the data in this report useful in our determination of an unsafe condition. We did not change this AD based on this comment.

Comment. Danbury Holdings commented that the FAA has not substantiated that the affected ECi cylinder assemblies have separated at 32 times the rate of the OEM cylinders. Danbury Holdings stated that the FAA had not provided any supporting documentation to substantiate the FAA's estimate that the OEM has produced approximately 4 times as many cylinders as ECi did over the same period of time. Danbury Holdings further commented that that the FAA ignores separations of other cylinder manufacturers.

Response. We disagree. We uploaded supporting information, including service history, to Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). We determined the comparative failure rate of affected ECi cylinders to OEM cylinders through comparing the service history of ECi cylinders to the OEM's since ECi received their PMA. That service history shows that the affected ECi cylinders have had approximately eight times as many separations over the same period of time as that of the OEM cylinders; since ECi received its PMA. We compared the affected ECi cylinder production rates from ECi, to that of the OEM since ECi received its PMA. From ECi's and the OEM's production information, we concluded that the OEM has produced approximately four times as many cylinders as ECi since ECi received its PMA. This yields a normalized failure rate that is approximately 8 (comparative cylinder failure rate) × 4 (comparative production rate), which showed an overall failure rate 32 times higher for ECi cylinders.

Since we first published that rate information, we subsequently learned of more failures of affected ECi cylinders. Those additional failures would, if included, increase the ECi failure rate. We did not update the failure rate to higher than 32 times that of the OEM's because it did not affect our decision regarding this AD. We did not change this AD based on this comment.

The FAA has also issued ADs against other cylinder manufacturers, including mandating early retirement of cylinders to preclude cracking and separation. For example, ADs 2014–05–29 and 2007–04–19R1 both apply to certain Superior Air Parts cylinder assemblies. We did not change this AD based on this comment.

Comment. Danbury Holdings also commented that the FAA failed to place all information in its purview into the docket and that the agency had failed to link its analyses to verifiable data.

Response. We disagree. As previously noted, we have uploaded the relevant documents used in the decision-making process of this AD in Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). Our analysis shows that the FAA's actions are based on the data that we included in the docket. Our analysis is therefore linked to "verifiable data." We did not change this AD based on this comment.

Comment. Danbury Holdings commented that the FAA had failed to provide any evidence that cylinder separations have resulted in engine failures, in-flight shutdowns, and/or loss of control of an airplane and that the agency had included accidents that were not the direct result of a cylinder separation.

Response. We disagree. A cylinder separating from its engine is an engine failure. We did not change this AD based on this comment.

Comment. RAM Aircraft commented that it assumes that the failures of ECi cylinder assemblies shown in the supporting document titled "ECi AD—Additional Failures Reported by RAM Aircraft" are based on letters RAM Aircraft sent to the FAA in 2013. RAM Aircraft, therefore, commented that this is not new information since the issuance of the January 8, 2015, SNPRM. Also, of the 38 photographs of damaged cylinder assemblies, RAM Aircraft noted that only 23 failures actually represent ECi cylinder assemblies.

Response. We partially agree. First, we agree that the failed cylinder assemblies identified in the supporting document "ECi AD—Additional Failures Reported by RAM Aircraft" do not represent new information since the issuance of the January 8, 2015, SNPRM. These failures are not represented in the SDR database but are consistent with our view that failures of these cylinder assemblies are under-reported.

Second, we agree that some of the cylinder photographs uploaded to the docket are not cylinder assemblies affected by this AD. The FAA sent a letter to RAM Aircraft specifically requesting any information that RAM Aircraft had relative to failures of ECi cylinder assemblies, P/N AEC 631397, after we learned of possible failures that had not been reported as required by 14 CFR 21.3. RAM Aircraft responded to this request with the photographs and data that we uploaded into Docket FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket). These photographs did not have any effect on our decision to issue this AD. We did not change this AD based on this comment.

Request To Describe FAA's Validation Process

Comment. Danbury Holdings requested that the FAA provide a description of the validation process that was used for each of the cylinder separations that the FAA used to substantiate the need for this AD.

Response. We interpret this comment as a request for identification of how we found out about the failures of ECi cylinder assemblies. We found out about the ECi cylinder assembly failures from the FAA SDR database and warranty information at ECi and RAM Aircraft, and failure reports from operators. Many of the operator SDR reports contained detailed information describing the nature and specific location of the separation. The findings of ECi Technical Report 1102–13 agreed with the original failure reports. We did not change this AD based on this comment.

C. Comments to the FAA's Rulemaking Processes

Request To Follow the APA

Comment. IPL Group, RAM Aircraft, and Danbury Holdings commented that the FAA had failed to follow the requirements of the APA when it dispositioned previous comments to the August 12, 2013, NPRM, and the January 8, 2015, SNPRM. IPL Group indicated that the FAA had, for example, summarily discounted previous comments, failed to conduct appropriate investigations of the failed cylinder assemblies, and mischaracterized hazard levels in the proposed ADs.

RAM Aircraft also commented that its previous comments were dispositioned in general categories in the January 8, 2015, SNPRM. RAM Aircraft, however, does not believe that the specifics of its comments were adequately or properly responded to, as required by the APA.

Response. We disagree. The commenters failed to provide any examples of where we failed to comply with the APA in our handling of comments to the August 12, 2013, NPRM, and by extension, the January 8, 2015, and August 25, 2015, SNPRMs. We have in our responses to the NPRM and the SNPRMs, and herein in this final rule, fully responded to all comments, including those comments concerning our investigation of the unsafe condition, hazard levels, and conclusions.

We carefully considered all comments we received. In our January 8, 2015, SNPRM and August 28, 2015, SNPRM, we responded to several hundred comments that we had received. Many were substantively the same and, therefore, as previously discussed we grouped them into several categories and answered the comments by category. The commenters have not indicated what, if anything, is improper about doing so nor how doing as we did might have violated the requirements of the APA. In this final rule, we responded to all remaining comments. We again used categories to group and answer comments that were similar if not identical. As to improperly recognizing affected ECi cylinder assemblies, we based our applicability of this AD on the reports of failure provided by ECi, the manufacturer, the reports required by 14 CFR that form the basis for the SDR, and the reports of the commenters themselves. We did not change this AD based on this comment.

Request To Withdraw the SNPRMs Because They Are Arbitrary and Capricious

Comment. Danbury Holdings and ARSA referred to the proposed rule as "arbitrary and capricious" because it does not apply equally to cylinder assemblies manufactured by the OEM. Danbury Holdings observed that the OEM's cylinders also separate and that the FAA has singled out ECi with this AD action.

Response. We disagree. The FAA is not mandating similar corrective actions against the OEM's cylinders because OEM service history data is different. Our review of OEM service history indicates that OEM cylinder assembly failures, unlike ECi cylinder assembly failures, are not traceable to any specific design or manufacturing anomaly. In contrast, the ECi PMA cylinder separations are traceable to design deficiencies, which ECi itself identified in ECi Technical Report 1102–13. We did not find the ECi cylinder assembly design deficiencies in cylinder assemblies produced by any other manufacturer. Further, ECi's failure rate is some 32 times greater than the OEM's. We did not change this AD based on this comment.

Comment. ARSA also indicated the rule is arbitrary and capricious because the FAA has failed to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made." Further, ARSA cites the APA as requiring federal agencies to allow meaningful public participation in the rulemaking process and provide a "statement of basis and purpose" justifying a rule's issuance." ARSA notes the obligation of the FAA to demonstrate a sound factual basis for the issuance of a rule by specifically disclosing to interested parties the material upon which a prospective rule would be fashioned.

Response. We disagree. Beyond its generalized allegation, the commenter did not identify any examples of agency shortcoming. We examined the relevant data, including the failure rate of the ECi assemblies, the ECi cylinder assembly design deficiencies, and the consequences to the engine and airplane when an ECi cylinder assembly failed. We reviewed and applied the applicable FAA Orders and policies.

The agency therefore, has articulated a satisfactory explanation for its action including a "rational connection between the facts found and the choice made."

We provided the public several opportunities to participate in this rule making; through extending the comment period and the two supplemental notices with their comment periods. For example, we first published an NPRM on August 12, 2013 (78 FR 48828), then published an extension of the comment period on September 26, 2013 (78 FR 59293) to allow the public additional time to comment on the proposed rule. We then issued a notice of availability of an initial regulatory flexibility analysis on March 12, 2014 (79 FR 13924). We reviewed the over 500 comments to the proposed rule that we had received, determined that we needed to review how we proposed to address the unsafe condition, formed a team to review the technical basis of the proposed rule, the numerous public comments, and the additional failure information provided by commenters to the NPRM. Through this team we confirmed that an AD is needed to correct the unsafe condition represented by the subject cylinder assemblies installed in aircraft engines, but that we could do so through a lengthier compliance interval. We published that revised compliance interval in our January 8, 2015, SNPRM.

After publication of the January 8, 2015, SNRPM, we issued the August 28, 2015, SNPRM to allow us to explain the rationale for this AD action. We also added several documents to Docket No. FAA–2012–0002 (see **ADDRESSES** section of this final rule for information on locating the docket), including the risk analyses by our CSTA for Aircraft Safety Analysis, and one using SARA methods, and various technical documents that list failures of ECi cylinder assemblies. For each of the documents we published, we allowed the public an opportunity to provide comments. We did not change this AD based on this comment.

Comment. ARSA also commented that presentation of relevant comments is further stymied by the agency's conclusory and unsupported responses to the NPRM submissions. ARSA commented that the agency stated that it was irrelevant that the root cause of the cylinder failures is unknown and that it "disagreed" that pilot error was a factor.

Response. We disagree. The purpose of this AD is to remove an unsafe condition in aircraft engines, not to identify root cause of cylinder failure(s). This AD resolves the unsafe condition by removing the affected cylinder assemblies from service in the engine models listed in this AD. We did not change this AD based on this comment.

Comment. Danbury Holdings also commented that the FAA had not provided substantiation for a change in the design requirement that ensures safe operation with one inoperative cylinder.

Response. The comment is not germane to this AD. We direct the commenter to the regulations relevant to design requirements, as found in 14 CFR. We did not withdraw the August 28, 2015, SNPRM.

Comment. Danbury Holdings commented that the FAA has admitted that the SDR database is problematic and that the FAA picked and chose data to fit a conclusion.

Response. We disagree. The SDR database reflects input received from field reporting. The SDR database may not reflect all service difficulty problems with affected ECI cylinder assemblies, but what information it contains indicates the need for this AD. Moreover, the SDR database is only one tool in our decision-making process. We did not change this AD based on this comment.

Comment. Several commenters commented that the FAA should withdraw the January 8, 2015, SNPRM because it unfairly targets ECi.

Response. We disagree. This AD does not "target" ECi, the PMA manufacturer of the affected cylinder assemblies. The AD resolves an unsafe condition in a product. We did not change this AD based on this comment.

Request To Substantiate That This AD Does Not Affect Airplanes Operated by Federal or State Agencies

Comment. Danbury Holdings commented that the FAA had not provided documentation to substantiate that no affected airplanes are operated by federal or state agencies.

Response. The comment is not relevant to whether this AD is necessary to resolve the unsafe condition presented by the engine with the affected ECi cylinders installed. We did not change this AD based on this comment.

Request To Substantiate That Airplanes Operating in Alaska Are Not Affected

Comment. Danbury Holdings stated that the FAA had not provided documentation that substantiates that remote locations of Alaska are not served by airplanes affected by this AD.

Response. The comment is not relevant to the technical basis for this AD. Further we state that this AD will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction. We did not change this AD based on this comment.

Request To Send Proposed Rule to Office of Information and Regulatory Affairs (OIRA) and Small Business Administration (SBA)

Comment. Danbury Aerospace commented that per Executive Order (E.O.) No. 13272, the FAA should provide the draft rule to the OIRA in the Office of Management and Budget (OMB) under E.O. No. 12866 and to the SBA's Chief Counsel for Advocacy.

Response. We partially agree. We do not agree that this rule meets the criteria of a significant regulatory action under E.O. 12866. Therefore, we did not provide the draft rule to the OMB. We agree that the rule has a significant effect on a substantial number of small entities. We, therefore, provided a copy of the rule to the SBA's Chief Counsel for Advocacy for comment. We received no comments from the SBA.

D. Comments to the Cost of This AD

Request To Revise and Provide Supporting Data for Number of Affected Cylinder Assemblies and Engines

Comment. Danbury Aerospace and RAM Aircraft indicated that the FAA has under-estimated the numbers of airplanes and engines affected and up to 11,000 aircraft may be affected based on the aircraft registry, or otherwise hasn't provided the data it used to determine the affected population of engines and cylinders.

Response. We disagree in part. We do not agree that 11,000 aircraft may be affected by this AD, or that we haven't provided the data used to determine the affected populations. Not all aircraft and engines on the aircraft registry use the affected ECi cylinder assemblies. Further, the commenter hasn't provided any factual basis for its assumption that all aircraft on the aircraft registry use ECi cylinder assemblies.

We agree that we could better estimate the number of engines affected by this AD. We again reviewed our estimate. We now estimate that approximately 6,200 engines are affected by this AD. That number is based on our initial estimate of approximately 43,000 affected cylinder assemblies produced by ECi from 2002 to 2011. This number is supported by AEC Technical Report 1102–13, dated April 30, 2011. We then reduced 43,000 by our estimated number of cylinder assemblies that would have been removed from service.

Our review indicates that approximately 6,000 of the 43,000 cylinder assemblies would have been retired from service by the time of the publication of this AD. Therefore, we estimate 37,000 cylinder assemblies may be in service, as of June 1, 2016. We divided this number by 6 cylinders per engine to give us an estimated 6,167 engines in service. To increase the conservatism of our cost estimate, we rounded this figure to 6,200 engines. We revised our cost estimate to reflect these updated calculations.

Request To Revise the Number of Labor Hours to Perform This AD

Comment. A few commenters, including IPL Group, indicated that the number of hours to replace 6 cylinders would be greater than the 18 hours that we estimated in our costs of compliance.

Response. We agree. In the August 12, 2013, NPRM, and the January 8, 2015, and August 28, 2015, SNPRM, we estimated 18 work hours. Although the commenters did not provide data to support increasing the number of work hours, we held discussions with manufacturers regarding the number of hours they would allow to perform this work. Based on these more recent discussions, we revised our estimate for the number of work hours to replace 6 cylinder assemblies to 32 hours.

Request To Revise Cost of Replacing a Cylinder Assembly in This AD

Comment. Danbury Aerospace, Danbury Holdings, RAM Aircraft, and IPL Group commented that the cost of a cylinder assembly, as calculated by the FAA, does not accurately represent replacement costs. The commenters indicated that the FAA's use of "pro-rated cost" allows a vast underestimation of actual expenses that would be incurred by owners. The agency must at least provide sound reasoning and facts supporting the assertion that the pro-rated cost "more accurately reflects" replacement cost. IPL Group further commented that a "pro-rated value" is inconsistent with FAA policy and the Regulatory Flexibility Act.

Response. We disagree in part. Industry, including ECi, uses pro-rated cost in its cost estimates. For example, ECi, in its MSB 05–8, Revision No. 1, dated December 29, 2005, used a similar time in service based pro-rated cost calculation to determine the discounted cost to operators for replacement cylinders, instead of providing the cylinders to the operators at no cost. Further, we typically use pro-rated cost for larger, turbofan engines when life-limited parts are involved. Operators of those engines are typically airlines and other large operators. Pro rata estimating therefore, is an acceptable method of estimating cost.

We agree however, that engines with affected ECi cylinders installed may be installed on airplanes owned by individual operators in the general aviation community, who are less familiar with the concept of pro-rated costs to ADs. In consequence, we revised our estimate to use the full replacement cost of each cylinder assembly even though this will likely result in an over-estimate of the total cost of this AD. We, therefore, used the replacement cost of 6 cylinder assemblies in this final rule. This resulted in an increase from $4,202 in the SNPRMs to $11,520 in this final rule.

Request To Include Additional Costs in the Overall Cost Estimate

Comment. IPL Group and Danbury Aerospace requested that we add additional costs to our overall cost estimate. IPL Group indicated that the FAA should include costs for loss of use of the aircraft, test flight, and break-in expenses. Danbury Aerospace commented that we should account for loss of overhauled assemblies as replacement items and new costs associated strictly with their replacement.

Response. We disagree. In constructing our cost estimate, we followed the guidance of the FAA's Airworthiness Directives Manual, FAA–IR–M–8040.1C, dated May 17, 2010, which states "Do not state any costs beyond initial work-hours and parts costs. . . ." The additional costs cited by the commenters are not appropriate to our cost estimates. We did not change this AD based on this comment.

Request To Withdraw the SNPRMs Because of Excessive Overall Cost

Comment. Several commenters commented that the FAA should withdraw the January 8, 2015, SNPRM and the August 28, 2015, SNPRMs because the FAA has underestimated the cost of compliance of this AD. These commenters represented that the true cost is too high and that the FAA has ignored the broader impact of this AD on industry. Most commenters failed to provide any data to support these claims, however, IPL Group provided some calculations to show that the total cost of this AD should be somewhere between $168,666,625 and $320,360,156.

Response. We disagree. We considered the impact that this AD would have on operators. As explained in response to the comments above, we increased our estimates of inspection costs, labor costs, and replacement costs of the cylinder assemblies. Although we increased our cost estimate, we still conclude that the unsafe condition represented by the affected cylinder assemblies requires an AD. We did not withdraw the SNPRMs based on this comment.

Request To Substantiate Record-Keeping and Time Estimates

Comment. Danbury Holdings also stated that the FAA had not provided documentation to substantiate its estimated record keeping cost and time estimates.

Response. We agree in part. We interpret this comment as a reference to both time spent on checking log books and reporting requirements. We withdrew our reporting requirement when we published the January 8, 2015, SNPRM, so we have no need to account for that cost. We added an inspection cost in this final rule for the time operators spend determining if they own an ECi cylinder assembly affected by this AD. The Costs of Compliance section now states "We estimate 0.5 hours will be needed to check log books to determine if an engine is affected by this AD."

E. Administrative Comments

Request To Clarify Address

Comment. The Continental Motors Group commented that the business at the address and telephone number listed in the August 28, 2015, SNPRM (9503 Middlex Drive, San Antonio, Texas 78217, Phone 210–820–8101) is now that of Continental Motors Inc., San Antonio. Continental Motors Group also indicated that the associated company Web site (*http://www.eci.aero/pages/tech_svcpubs.aspx*) listed in the August 28, 2015, SNPRM is not functional at this time.

Response. We agree. We updated the address and Web site information listed in the **ADDRESSES** and "Related Information" sections of this AD.

Request To Provide Names of Those Involved in the AD Process

Comment. Danbury Aerospace and Danbury Holdings commented that the FAA should provide the names and technical positions of each of the members of the multi-disciplinary/multi-directorate team that were involved in the review of this service difficulty problem, along with the dates, locations, and minutes for any meetings that were held.

Response. We disagree. The names and positions of personnel associated with reviewing this AD are not necessary to the public's participation in the development of this AD. We did not change this AD based on this comment.

F. Support for the SNPRM

Comment. The NTSB commented that it believes that the August 28, 2015, SNPRM will satisfy the intent of NTSB Safety Recommendation A–12–7. An individual commenter indicated that he had reviewed the SDR database and determined that the separation rate of ECi cylinder assemblies is approximately 10 times the rate of OEM cylinder assemblies.

Response. We note the comment.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed.

Costs of Compliance

We estimate that this AD affects about 6,200 CMI model IO–520, TSIO–520, IO–550, and IOF–550 reciprocating engines and all other CMI engine models approved for the use of CMI models –520 and –550 cylinder assemblies (such as the CMI model –470 when modified by STC), installed on airplanes of U.S. registry. The average labor rate is $85 per hour. We estimate 0.5 hours will be needed to check log books to determine if an engine is affected by this AD. We estimate that about 32 hours will be required to replace all six cylinder assemblies of an engine during overhaul. We estimate the cost of replacement of six cylinder assemblies to be, on average, about $11,520 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to change all ECi cylinder assemblies to be $88,551,500.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. The FAA determined that this rule will have a significant economic impact on a substantial number of small entities and, accordingly, as required by Section 603(a) of the RFA, the FAA prepared and published an initial regulatory flexibility analysis (IRFA) (79 FR 13924, March 12, 2014) as part of the NPRM (79 FR 48828, August 12, 2013) and initial SNPRM (80 FR 1008, January 8, 2015) for this rule. For the second SNPRM, the FAA inadvertently stated that there would be no significant impact on a substantial number of entities. We also omitted the IRFA from the second SNPRM because we thought republication unnecessary as costs had not changed and the IRFA had already been published in the first SNPRM. In addition to the IRFA, Section 604 of the RFA also requires an agency to publish a final regulatory flexibility analysis (FRFA) in the **Federal Register** when issuing a final rule.

With this FRFA we correct our misstatement in the second SNPRM and restate our previous conclusions for the NPRM and in the first SNPRM that the rule will have a significant impact on a substantial number of small entities. Accordingly, in the following section we undertake the regulatory flexibility analysis.

Final Regulatory Flexibility Analysis

Under Section 604(a) of the RFA, the Final analysis must address:

(1) *Statement of the need for, and objectives of, the rule.*

This final rule AD was prompted by failure reports of multiple cylinder head-to-barrel separations and cracked and leaking aluminum cylinder heads. This AD will apply to certain CMI San Antonio replacement PMA cylinder assemblies marketed by ECi, used on the CMI model –520 and –550 reciprocating engines, and all other engine models approved for the use of CMI model –520 and –550 cylinder assemblies such as the CMI model –470 when modified by STC.

(2) *Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.*

Danbury Holdings commented that the FAA had not provided the raw data that was used in the IRFA. We note that the provision of raw data is not required by the FAA's rulemaking procedures or orders.

In response to comments about problems with the repetitive compression/soap test proposed by the NPRM, the FAA agrees that these tests do not always reliably detect a cracked cylinder of this failure mode and therefore the costs associated with such tests outweigh the safety benefits. In the January 8, 2015 SNPRM the FAA removed the requirement for repetitive compression/soap inspection tests.

The FAA received comments questioning the reduction of the estimated number of smaller air service businesses (in addition to the estimated 609 small part 135 operators) that would be affected by the rule, from 5,000 in the IRFA to 2,000 in the January 8, 2015, SNPRM. We note that in both cases the FAA stated that a substantial number of small entities would be affected. Given the lack of available data, the FAA is unable to make an accurate estimate of the number of smaller air service businesses that will be affected by this rule, but acknowledges that this number is substantial. In addition to the 609 small part 135 operators, we therefore estimate in this final rule that the number of smaller air service businesses affected is substantial.

After publication of the NPRM and after publication of each of the two SNPRMs, we also received comments from small businesses concerning understated compliance costs. Some commenters stated that the labor rate and the hours required to replace an affected engine's cylinders are underestimated. We agree with this comment in part and have increased our estimate of the labor hours required to replace an affected engine's six cylinder assemblies from 18 to 32 hours, with a corresponding labor cost increase from $1,530 to $2,720.

In response to comments we have also increased our cost of materials estimate from a loss-of-service estimate of $4,202 to the full cost to replace all six cylinders, which has increased to $11,520. Our estimate of the total cost to replace all six cylinders has therefore increased from $5,732 to $14,240.

After publication of the August 28, 2015, SNPRM, we received negative comments concerning the inadvertent change from our original determination of a significant economic impact on a substantial number of small entities in the IRFA (and the January 8, 2015, SNPRM) to a determination of no significant impact on a substantial number of small entities. As noted in the introductory section, we are correcting this oversight in this FRFA.

(3) *The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.*

The SBA did not submit comments.

(4) *Description and an estimated number of small entities to which the final rule will apply.*

Of the 610 part 135 operators we found to be affected by this rule, we identified 609 that meet the Small Business Administration (SBA) definition of a small entity (entities with 1,500 or fewer employees) that will be affected by this final rule. On this basis alone, we conclude that the final rule will affect a substantial number of small entities. In addition, we estimate that a substantial, but undetermined number of smaller air services businesses will be affected by this final rule. The FAA is unaware of the assets or financial resources of these businesses. The affected part 135 and smaller air services fly fixed wing aircraft; employ less than 1,500 employees; and conduct a variety of air services such as fly passengers and cargo for hire.

(5) *Description of the record keeping and other compliance requirements of the final rule.*

Record Keeping Requirement

The FAA estimates 0.5 hours will be needed to check log books to determine if an engine is affected by this AD. At a wage rate of $85 per hour, the estimated cost will be $42.50 per engine. As the affected small part 135 operators have between one and 88 affected airplanes, the costs of this requirement range from $42.50 to $3740 per part 135 operator.

Compliance Requirement To Replace Cylinder Assemblies of Affected Engines

This AD applies to certain CMI model IO–520, TSIO–520, IO–550, and IOF–550 reciprocating engines and all other engine models approved for the use of CMI models -520 and -550 cylinder assemblies (such as the CMI model -470 when modified by STC), installed on airplanes of U.S. registry. For the affected engines the AD requires replacement of the cylinder assemblies at reduced times-in-service.

As noted above our estimate of the total cost to replace all six cylinders has increased from $5,732 to $14,240. As the number of airplanes held by affected small part 135 operators ranges from one to 88, the costs of required cylinder assembly replacement per operator range from about $14.2 thousand to about $1.3 million.

To determine whether compliance costs will have a significant economic impact, we measured the cost of replacing cylinder assemblies of affected engines relative to the value of the affected airplanes held by the small part 135 operators. The estimated asset value of the affected airplanes held by the small part 135 operators ranges from $22,000 to $19.6 million. We find that the cost of replacing cylinder assemblies relative to affected airplane asset value is greater than 5 percent for 468 of the 609 affected small part 135 operators.[2] We therefore conclude that the final rule will have a significant economic impact on a substantial number of small entities.

(6) *Steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

In response to comments about problems with repetitive compression/soap test, the FAA agrees that these tests do not always reliably detect a cracked cylinder of this failure mode and the costs associated with such tests outweigh the safety benefit. The FAA removed that requirement for repetitive compression/soap inspection tests. We also considered these following alternatives:

(a) Do nothing—This option is not acceptable due to the number of failures of ECi cylinder head assemblies and the consequences of the failures.

(b) Periodic inspections only (no forced removals)—Though the NTSB recommended this option in its comments to the NPRM (August 12, 2013, 78 FR 48828), the service history has shown that such inspections may not reliably detect existing cracks and the rate of crack growth to separation is unknown and variable. The NTSB also submitted a later comment, in response to the August 28, 2015, SNPRM, that the revised rule as adopted in this final rule, meets the intent of its Safety Recommendations A–12–7.

(c) Forced removal with periodic inspections—Periodic inspections may not reliably detect cracks and even with removal the rate of crack growth to separation is unknown and variable. Forced removal is the only remaining option.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–16–12 Continental Motors, Inc. (formerly Teledyne Continental Motors, Inc., formerly Continental): Amendment 39–18610; Docket No. FAA–2012–0002; Directorate Identifier 2011–NE–42–AD.

(a) Effective Date

This AD is effective September 15, 2016.

(b) Affected ADs

None.

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[2] This assessment does not take into account record keeping requirement costs. These costs, however, are minor and do not affect our assessment of the number of small part 121 operators significantly impacted by the final rule.

(c) Applicability

This AD applies to all Continental Motors, Inc. (CMI) model –520 and –550 reciprocating engines, and to all other CMI engine models approved for the use of model –520 and –550 cylinder assemblies such as the CMI model –470 when modified by supplemental type certificate (STC), with Continental Motors Inc., San Antonio (formerly Airmotive Engineering Corp.), replacement parts manufacturer approval (PMA) cylinder assemblies, marketed by Engine Components International Division (hereinafter referred to as ECi), part number (P/N) AEC 631397, with ECi Class 71 or Class 76, serial number (S/N) 1 through S/N 61176, installed.

(d) Unsafe Condition

This AD was prompted by multiple failure reports of cylinder head-to-barrel separations and cracked and leaking aluminum cylinder heads. We are issuing this AD to prevent failure of the cylinder assemblies, which could lead to failure of the engine, in-flight shutdown, and loss of control of the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Review the engine maintenance records to determine if any affected cylinder assemblies are installed.

(2) If you cannot determine based on review of engine maintenance records if any affected cylinder assemblies are installed, comply with paragraph (e)(4) of this AD.

(3) If you do not have any of the affected ECi cylinder assemblies installed on your engine, no further action is required.

(4) Cylinder Identification and Serial Number Location

(i) Check the cylinder assembly P/N and Class number. The ECi cylinder assembly, P/N AEC 631397, Class 71 or Class 76, is stamped on the bottom flange of the cylinder barrel. Guidance on the P/N and Class number description and location can be found in ECi Service Instruction No. 99–8–1, Revision 9, dated February 23, 2009.

(ii) If you cannot see the cylinder assembly P/N when the cylinder assembly is installed on the engine, you may use the following alternative method of identification:

(A) Remove the cylinder assembly rocker box cover.

(B) Find the letters ECi, cast into the cylinder head between the valve stems.

(C) Check the cylinder head casting P/N. Affected cylinder assemblies have the cylinder head casting, P/N AEC 65385, cast into the cylinder head between the valve stems.

(D) Find the cylinder assembly S/N as specified in paragraphs (e)(4)(iii) or (e)(4)(iv) of this AD, as applicable.

(iii) For ECi cylinder assemblies, P/N AEC 631397, manufactured through 2008, find the cylinder assembly S/N stamped on the intake port boss two inches down from the top edge of the head.

(iv) For ECi cylinder assemblies, P/N AEC 631397, manufactured on or after January 1, 2009, find the cylinder assembly S/N stamped just below the top edge of the head on the exhaust port side.

(5) Removal From Service

(i) For any affected cylinder assembly with 680 or fewer operating hours time-in-service (TIS) since new on the effective date of this AD, remove the cylinder assembly from service before reaching 1,000 operating hours TIS since new.

(ii) For any affected cylinder assembly with more than 680 operating hours TIS since new and 1,000 or fewer operating hours TIS since new on the effective date of this AD, remove the cylinder assembly from service within the next 320 operating hours TIS or within 1,160 operating hours TIS since new, whichever occurs first.

(iii) For any affected cylinder assembly with more than 1,000 operating hours TIS since new on the effective date of this AD, remove the cylinder assembly from service within the next 160 operating hours or at next engine overhaul, whichever occurs first.

(iv) For any affected cylinder assembly that has been overhauled, remove the cylinder assembly from service within the next 80 operating hours TIS after the effective date of this AD.

(f) Installation Prohibitions

After the effective date of this AD:

(1) Do not repair, or reinstall onto any engine, any cylinder assembly removed per this AD.

(2) Do not install any affected ECi cylinder assembly that has been overhauled, into any engine.

(3) Do not install any engine that has one or more affected overhauled ECi cylinder assemblies, onto any aircraft.

(4) Do not return to service any aircraft that has an engine installed with an ECi cylinder assembly subject to this AD, if the cylinder assembly has 1,000 or more operating hours TIS.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Delegation Systems Certification Office or Fort Worth Aircraft Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Jurgen E. Priester, Aerospace Engineer, Delegation Systems Certification Office, FAA, Rotorcraft Directorate, 10101 Hillwood Parkway, Fort Worth, TX 76177; phone: 817–222–5190; fax: 817–222–5785; email: *jurgen.e.priester@faa.gov.*

(2) For ECi Service Instruction No. 99–8–1, Revision 9, dated February 23, 2009, which is not incorporated by reference in this AD, contact Continental Motors—San Antonio, 9503 Middlex Drive, San Antonio, TX 78217; phone: 210–820–8101; Internet: *http://www.continentalsanantonio.com.*

(3) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(i) Material Incorporated by Reference

None.

Issued in Burlington Massachusetts, on July 19, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–18708 Filed 8–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–5856; Airspace Docket No. 16–AGL–9]

Establishment of Class E Airspace; Park River, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace in Park River, ND. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures developed at Park River-W C Skjerven Field, Park River, ND, for the safety and management of Instrument Flight Rules (IFR) operations at the airport. Additionally, to correct airport name to correspond with the NASR in the header and legal description.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support

Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Park River-W C Skjerven Field, Park River, ND.

History

On May 24, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E Airspace in the Park River, ND area. (81 FR 32679) FAA–2016–5856. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Park River-W C Skjerven Field, Park River, ND, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport. Additionally, this corrects the airport name to coordinate with the NASR, previously listed in the NPRM header and legal description as Park River Airport-WC Skjerven Field to Park River-W C Skjerven Field.

Class E airspace areas are published in Section 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL ND E5 Park River, ND [New]

Park River–W C Skjerven Field
(Lat. 48°23′39″ N., long. 097°46′51″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Park River–W C Skjerven Field.

Issued in Fort Worth, TX, on July 28, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–18772 Filed 8–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–4629; Airspace Docket No. 16–AGL–8]

Amendment of Class E Airspace for the Following Michigan Towns; Alma, MI; Bellaire, MI; Cadillac, MI; Drummond Island, MI; Gladwin, MI; Holland, MI; and Three Rivers, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Gratiot Community Airport, Alma, MI; Antrim County Airport, Bellaire, MI; Wexford County Airport, Cadillac, MI; Drummond Island Airport, Drummond Island, MI; Charles C. Zettel Memorial Airport, Gladwin, MI; Park Township Airport and West Michigan Regional Airport, Holland, MI; and Three Rivers Municipal Dr. Haines Airport, Three Rivers, MI. Decommissioning of non-directional radio beacons (NDB),

cancellation of NDB approaches, or implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. This action also updates the geographic coordinates of Three Rivers Municipal Dr. Haines Airport, and the name change of West Michigan Regional Airport (formerly Tulip City Airport) to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Gratiot Community Airport, Alma, MI; Antrim County Airport, Bellaire, MI; Wexford County Airport, Cadillac, MI; Drummond Island Airport, Drummond Island, MI; Charles C. Zettel Memorial Airport, Gladwin, MI; Park Township Airport and West Michigan Regional Airport, Holland, MI; and Three Rivers Municipal Dr. Haines Airport, Three Rivers, MI.

History

On May 3, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class E airspace at Gratiot Community Airport, Alma, MI; Antrim County Airport, Bellaire, MI; Wexford County Airport, Cadillac, MI; Drummond Island Airport, Drummond Island, MI; Charles C. Zettel Memorial Airport, Gladwin, MI; Park Township Airport and West Michigan Regional Airport, Holland, MI; and Three Rivers Municipal Dr. Haines Airport, Three Rivers, MI (81 FR 26501) Docket No. FAA–2016–4629. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at the following airports:

Within a 6.5-mile radius of Gratiot Community Airport, Alma, MI;

Within a 6.5-mile radius of Antrim County Airport, Bellaire, MI, with a segment extending from the 6.5-mile radius to 6.9 miles south of the airport;

Within a 6.7-mile radius of Wexford County Airport, Cadillac, MI;

Within a 6.5-mile radius of Drummond Island Airport, Drummond Island, MI, with a segment extending from the 6.5-mile radius to 8.5 miles east of the airport;

Within a 6.5-mile radius of Charles C. Zettel Memorial Airport, Gladwin, MI;

Within a 6.5-mile radius of West Michigan Regional Airport (formerly Tulip City Airport), Holland, MI; Park Township Airport is removed as it no longer has instrument procedures and no longer requires Class E airspace; and

Within a 6.4 mile radius of Three Rivers Municipal Dr. Haines Airport, Three Rivers, MI, and updates the geographic coordinates of this airport to coincide with the FAAs aeronautical database.

These airspace reconfigurations are necessary due to the decommissioning of NDBs, cancellation of NDB approaches, or implementation of RNAV procedures at the above airports. Controlled airspace is necessary for the safety and management of the standard instrument approach procedures for IFR operations at the airports.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Alma, MI [Amended]

Alma, Gratiot Community Airport, MI
(Lat. 43°19′20″ N., long. 84°41′17″ W.)
Mount Pleasant VOR/DME
(Lat. 43°37′22″ N., long. 84°44′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Gratiot Community Airport, and within 2.0 miles either side of a 270° bearing from the airport extending from the 6.5-mile radius to 10.1 miles west of the airport, and within 1.5 miles either side of the Mount Pleasant VOR/DME 178° radial extending from the 6.5-mile radius to 10.3 miles north of the airport.

* * * * *

AGL MI E5 Bellaire, MI [Amended]

Bellaire, Antrim County Airport, MI
(Lat. 44°59′19″ N., long. 85°11′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Antrim County Airport, and within 1.9 miles each side of the 197° bearing from the airport extending from the 6.5-mile radius to 6.9 miles south of the airport.

* * * * *

AGL MI E5 Cadillac, MI [Amended]

Cadillac, Wexford County Airport, MI
(Lat. 44°16′31″ N., long. 85°25′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Wexford County Airport.

* * * * *

AGL MI E5 Drummond Island, MI [Amended]

Drummond Island Airport, MI
(Lat. 46° 00′34″ N., long. 83° 44′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Drummond Island Airport, and within 4 miles each side of the 072° bearing from the airport extending from the 6.5-mile radius to 8.5 miles east of the airport; that airspace extending upward from 1,200 feet above the surface bounded by long. 83° 57′00″ W., on the west; long. 83° 26′00″ W., on the east; lat. 46° 05′00″ N., on the north; and lat. 45° 45′00″ N., on the south, excluding that airspace within Canada.

* * * * *

AGL MI E5 Gladwin, MI [Amended]

Charles C. Zettel Memorial Airport, MI
(Lat. 43°58′14″ N., long. 84°28′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Charles C. Zettel Memorial Airport.

* * * * *

AGL MI E5 Holland, MI [Amended]

West Michigan Regional Airport, MI
(Lat. 42°44′34″ N., long. 86°06′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the West Michigan Regional Airport.

* * * * *

AGL MI E5 Three Rivers, MI [Amended]

Three Rivers Municipal Dr Haines Airport, MI
(Lat. 41°57′35″ N., long. 85°35′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Three Rivers Municipal Dr Haines Airport, excluding that airspace within the Sturgis, Kirsch Municipal Airport, MI, Class E airspace area.

Issued in Fort Worth, Texas, on July 29, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–18777 Filed 8–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 16

[Docket No. FDA–2016–N–0011]

Regulatory Hearing Before the Food and Drug Administration; General Provisions; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct an error in the lists of statutory and regulatory provisions that provide an opportunity for an informal hearing so that the lists correctly reference the statutory and regulatory provisions that provide such an opportunity in connection with a ban of a device. This action is being taken to align the regulations with the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and avoid any potential confusion the erroneous lists may cause.

DATES: This rule is effective August 11, 2016.

FOR FURTHER INFORMATION CONTACT: Ian Ostermiller, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5515, Silver Spring, MD 20993–0002, 301–796–5678.

SUPPLEMENTARY INFORMATION: FDA is correcting an error in the regulations that identify the statutory and regulatory provisions that provide an opportunity for a regulatory hearing, also known as an informal hearing (§ 16.1 (21 CFR 16.1)). In the list of statutory provisions at § 16.1(b)(1), the Agency is adding a reference to subsection (b) of section 516 of the FD&C Act (21 U.S.C. 360f), which provides for a reasonable opportunity for an informal hearing when FDA proposes a medical device ban with a special effective date (21 U.S.C. 360f(b)(2)). The list of statutory provisions does not currently specify subsection (b) of section 516 of the FD&C Act, and it incorrectly refers to 21 CFR 895.21(d). An opportunity for a hearing is not required under section 516 of the FD&C Act or part 895 (21 CFR part 895) for bans that do not have a special effective date.

Further, the list of regulatory provisions at § 16.1(b)(2) does not include any reference to part 895. We are correcting this by adding a reference to § 895.30(c), which provides for an opportunity for an informal hearing under 21 CFR part 16 when FDA proposes a medical device ban with a special effective date. These corrections will align § 16.1(b) with section 516 of the FD&C Act and part 895 to avoid confusion regarding when an opportunity for hearing is required for a device ban.

Prior to the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629), the FD&C Act required the Secretary of Health and Human Services to afford an opportunity for informal hearings about any proposed rule to ban a medical device, regardless of effective date. One of the SMDA's provisions removed the requirement that FDA provide an opportunity for an informal hearing when FDA does not establish a special effective date for a proposed ban.[1] However, the SMDA did not eliminate the informal hearing provision for a proposed ban issued with a special effective date. Thus, section 516(b) of the FD&C Act continues to require that FDA "provide reasonable opportunity for an informal hearing" on a proposed ban with a special effective date (21 U.S.C. 360f(b)) while subsection (a), the general rule for medical device bans, does not (see 21 U.S.C. 360f(a)).

On December 10, 1992 (57 FR 58400), FDA published a final rule implementing the SMDA. The final rule of 1992 amended § 895.21(d), which covers the procedures for issuing a ban without a special effective date, by removing the requirement that FDA provide an opportunity for an informal hearing when there is no special effective date.[2] FDA incorrectly removed the same language from § 895.30, which covers the procedures for issuing bans with special effective dates; the Agency issued a technical amendment restoring this language in the **Federal Register** of June 2, 2015 (80 FR 31299). However, FDA did not correct the language in § 16.1 to list section 516(b) of the FD&C Act and § 895.30(c) as the provisions that provide for regulatory (informal) hearings, nor did the Agency remove the reference to § 895.21(d). FDA does so now.

FDA finds good cause for issuing this amendment to § 16.1(b)(1) as a final rule without notice and comment because this amendment corrects the regulations to restate the statute (5 U.S.C. 553(b)(B)). "[W]hen regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary." *Gray Panthers Advocacy Committee* v. *Sullivan,* 936 F.2d 1284, 1291 (D.C. Cir. 1991); see also *Komjathy* v. *Nat. Trans. Safety Bd.,* 832 F.2d 1294, 1296 (D.C. Cir. 1987) (when a rule "does no more than repeat, virtually verbatim, the statutory grant of authority," notice-and-comment procedures are not required). Further, the change to remove the erroneous cross-reference to § 895.21(d) and add the correct cross-reference to§ 895.30(c) is merely technical, insignificant in nature and impact, and inconsequential to industry and the public. See *Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94 (D.C. Cir. 2012). This is because this correction in no way changes when FDA is required to provide an opportunity for a hearing, which is determined by section 516 of the FD&C Act and part 895, nor does it impact the availability of such a hearing to any entity impacted by the proposed ban. It merely corrects a citation error to avoid confusion. This amendment to § 16.1(b) thus merely corrects the references to the applicable requirements of the FD&C Act and its implementing regulations, making notice-and-comment procedures unnecessary in this case. Therefore, publication of this document constitutes final action on this change under the Administrative Procedure Act (APA) (5 U.S.C. 553).

In addition, FDA finds good cause for this amendment to become effective on the date of publication of this action. The APA allows an effective date less than 30 days after publication as "provided by the agency for good cause found and published with the rule" (5 U.S.C. 553(d)(3)). A delayed effective date is unnecessary in this case because the amendment to § 16.1 does not impose any new regulatory requirements on affected parties. As a result, affected parties do not need time to prepare before the rule takes effect. Therefore, FDA finds good cause for this correction to become effective on the date of publication of this action.

List of Subjects in 21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 16 is amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

■ 2. Amend § 16.1 as follows:

■ a. In paragraph (b)(1), remove from the list the entry "Section 516 of the act relating to a proposed banned device regulations (see § 895.21(d) of this chapter)." and add in its place "Section 516(b) of the act regarding a proposed regulation to ban a medical device with a special effective date."

■ b. In paragraph (b)(2), add an entry in numerical sequence for "§ 895.30(c), regarding a proposed regulation to ban a medical device with a special effective date."

Dated: August 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18787 Filed 8–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. FDA–2016–N–1943]

New Animal Drug Applications; Contents of Notice of Opportunity for a Hearing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correcting amendments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is making technical corrections to its regulations for hearing procedures for denial of approval or withdrawal of approval of new animal drug applications. The Agency is taking this action to harmonize terminology and to improve the organization and clarity of the regulations.

DATES: This rule is effective August 11, 2016.

ADDRESSES: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the "Search" box and follow the prompts, and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vernon Toelle, Center for Veterinary Medicine (HFV–234), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5637, *vernon.toelle@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

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[1] Specifically, the SMDA deleted the then-last sentence of section 516(a). See Public Law 101–629, section 18(d)(2) ("Section 516(a) (21 U.S.C. 360f(a)) is amended . . . by striking out the last sentence."); 21 U.S.C. 360f(a) (1989) (stating, in the last sentence, "The Secretary shall afford all interested persons opportunity for an informal hearing on a regulation proposed under this subsection.").

[2] Although the hearing provision was validly removed from § 895.21(d)(8) in 1992, the removed language erroneously reappeared in the Code of Federal Regulations beginning in 1994. On March 5, 2015 (80 FR 11865), the Office of the Federal Register published a correction document fixing this publication error.

I. Background

This regulation is intended to make technical amendments to § 514.200 (21 CFR 514.200) to harmonize the terminology with part 12 (21 CFR part 12), as well as to update § 514.200 in accordance with plain language principles to make it easier for the public to understand and follow.

When the Agency issued procedural regulations for formal evidentiary public hearings, originally published in part 2 (21 CFR part 2) and later redesignated to part 12,[1] we intended those provisions to apply to all formal evidentiary hearings on new product applications, including new animal drug applications. As explained in the proposed rule, once the specific provisions in 21 CFR parts 511 and 514 relating to investigational and marketed new animal drugs were revised in the same way as their counterpart provisions relating to investigational and marketed new drugs, to refer to the new procedural provisions in part 2, the prior procedural provisions relating to hearings would be revoked.[2]

Consequently, when part 12 was finalized, we revised the regulations specific to new animal drugs. These revisions included revoking certain provisions and revising 21 CFR 514.201 to state that hearings related to new animal drugs under section 512(d) and (e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(d) and (e)) shall be governed by part 12 of this chapter. However, when we made these revisions to part 514, we neglected to update § 514.200 to match the terminology used in part 12.

Therefore, we are now revising § 514.200 to make its language and terminology consistent with the language and terminology of the procedural regulations for hearings in part 12. Specifically, we are changing the references to ''administrative law judge'' in current § 514.200 to the term ''presiding officer'', which is defined in 21 CFR 10.3[3] and further explained in 21 CFR 12.60 as the presiding officer in a hearing will be the Commissioner, a member of the Commissioner's office to whom the responsibility for the matter involved has been delegated, or an administrative law judge qualified under 5 U.S.C. 3105. Since the term ''presiding officer'' is used throughout part 12, we are updating the language of § 514.200 to use the same terminology. We are also updating the language in current § 514.200 from ''written appearance'' to ''objections and request for a hearing'' since the latter terminology is used throughout part 12. Finally, we are updating the language in § 514.200 on the contents of the objections and request for hearing and the contents of the Commissioner's notice granting a hearing to match the language of part 12 and to make clear what is required. These updates will eliminate confusion that could be caused by use of different terms to refer to the same procedural requirements and allow the reader to obtain necessary information in one place. We anticipate these technical changes will make § 514.200 easier for the public to understand and follow.

Since we are revising § 514.200 to harmonize the language and terminology with part 12, we are also taking this opportunity to update the language of § 514.200 in accordance with the Plain Writing Act of 2010 (Pub. L. 111–274) and Executive Order 13563. The Plain Writing Act of 2010 requires that all Federal agencies use ''clear government communication that the public can understand and use.'' Executive Order 13563 mandates that all regulations be ''accessible, consistent, written in plain language, and easy to understand.'' Therefore, we are eliminating gender-specific pronouns, passive voice, complicated sentence structure, and archaic language, and updating the language to make it more reader-friendly and accessible. We anticipate that these changes will make § 514.200 clearer and easier to read. Additionally, we are updating the title of that section from ''Contents of notice of opportunity for a hearing'' to ''Notice of opportunity for hearing; notice of participation and requests for hearing; grant or denial of hearing'' because the latter title more accurately describes the type of information found in § 514.200. The latter title also harmonizes with an analogous section for new drug applications in 21 CFR 314.200.

All of these corrections are nonsubstantive, technical amendments designed to harmonize the language and terminology of § 514.200 with the governing regulation on formal evidentiary public hearings in part 12 and to make the language of § 514.200 easier for the public to understand and follow. We are taking this action as a part of our Retrospective Review Initiative[4] to clarify and harmonize the regulations and to update the language in accordance with the Plain Writing Act of 2010 and Executive Order 13563.

II. Legal Authority

FDA is issuing these regulations under section 512(e) of the FD&C Act. This section gives the Secretary of Health and Human Services the authority to grant approval, deny approval, or withdraw approval of new animal drug applications. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

Section 6 of Executive Order 13563 states that FDA is under a continuing obligation to review its existing regulations periodically to determine whether any such regulations should be modified, streamlined, expanded, or repealed to improve regulatory effectiveness and reduce public burden. The Plain Writing Act of 2010 mandates that all regulations be written in clear language that is easy for the public to understand and use.

This rule makes technical amendments to § 514.200 to harmonize the language and terminology with the governing regulation on administrative hearings in part 12 and to update the language in accordance with the Plain Writing Act of 2010 and Executive Order 13563. Publication of this document constitutes final action on these changes under the Agency's original intent with respect to the hearing provisions for new animal drug applications. Therefore, for good cause, FDA finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

III. Effective Date

These regulations are effective upon publication.

IV. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

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[1] See 41 FR 51706, November 23, 1976, and 42 FR 4680, January 25, 1977.

[2] See 40 FR 40682 at 40716, September 3, 1975.

[3] ''*Presiding officer* means the Commissioner or the Commissioner's designee or an administrative law judge appointed as provided in 5 U.S.C. 3105.''

[4] See E.O. 13563, section 6.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule is making only technical amendments, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.31(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, FDA is not required to seek clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

VII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 1. The authority citation for part 514 continues to read:

Authority: 21 U.S.C. 321, 331, 351, 352, 354, 356a, 360b, 371, 379e, 381.

■ 2. Revise § 514.200 to read as follows:

§ 514.200 Notice of opportunity for hearing; notice of participation and requests for hearing; grant or denial of hearing.

(a) The notice to the applicant of opportunity for a hearing on a proposal by the Commissioner to refuse to approve an application or to withdraw the approval of an application will be published in the **Federal Register** together with an explanation of the grounds for the proposed action. The notice will describe how to request a hearing. An applicant has 30 days after publication of the notice to request a hearing.

(b) If the applicant fails to request a hearing within the 30-day timeframe, the Commissioner, without further notice, will publish a final order denying or withdrawing approval of the application.

(c) If the applicant desires to request a hearing:

(1) Within 30 days after publication of the notice of opportunity for hearing, the applicant must submit to the Division of Dockets Management written objections and a request for a hearing in accordance with §§ 12.20 and 12.22. This request for a hearing must include each specific objection to the proposal on which a hearing is requested, together with a detailed description and analysis of the factual information (including all relevant clinical and other investigational data) the applicant will present in support of that objection. A request for a hearing may not rest upon mere allegations or denials or general descriptions of positions or contentions, but must set forth specific reliable evidence showing there is a genuine and substantial issue of fact that requires a hearing.

(2) If the Commissioner determines upon review of the data and information submitted in the objections and request for a hearing that a hearing is not justified because no genuine and substantial issue of fact precludes the refusal to approve the application or the withdrawal of approval of the application (for example, the applicant has not identified any adequate and well-controlled clinical investigations to support the claims of effectiveness), the Commissioner will enter an order denying the hearing and stating the final findings and conclusions.

(3) If the Commissioner determines upon review of the data and information submitted in the objections and request for a hearing that a hearing is justified, the Commissioner will publish a notice setting forth the following:

(i) The regulation or order that is the subject of the hearing;

(ii) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commissioner's discretion;

(iii) The parties to the hearing;

(iv) The specific issues of fact for resolution at the hearing;

(v) The presiding officer, or a statement that the presiding officer will be designated in a later notice; and

(vi) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. However, in the case of a denial of approval, the hearing must not occur more than 90 days after expiration of the 30-day time period in which to request a hearing, unless the presiding officer and the applicant otherwise agree; and in the case of withdrawal of approval, the hearing will occur as soon as practicable.

(d) The hearing will be open to the public; however, if the Commissioner finds that portions of the application which serve as a basis for the hearing contain information concerning a method or process entitled to protection as a trade secret, the part of the hearing involving such portions will not be public, unless the respondent so specifies in the request for a hearing.

Dated: August 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18809 Filed 8–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–5776–F–02]

RIN 2502–AJ32

Disposition of HUD-Acquired Single Family Properties; Updating HUD's Single Family Property Disposition Regulations

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's property disposition regulations. Specifically, this rule consolidates and reorganizes these regulations to better reflect industry standards, and allow HUD to conduct its Single Family Property Disposition Program more efficiently and effectively so that HUD can obtain the greatest value for its real estate-owned (REO) properties in different market conditions. This final rule follows publication of the October 2, 2015, proposed rule and, after considering public comments submitted in response to the proposed rule, adopts the proposed rule with minor change.

DATES: *Effective Date:* September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas Kumi, Director, Single Family Asset Management and Disposition Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9172, Washington, DC 20410–8000, telephone number 202–708–1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 204(g) of the National Housing Act (12 U.S.C. 1710g) addresses the management and disposition of HUD-acquired single-family properties, which includes HUD-acquired real and personal property assets. HUD's implementing regulations are codified in 24 CFR part 291. Under this statutory and regulatory authority, HUD is charged with carrying out a program of sales of HUD-acquired and owned properties, along with appropriate credit terms and standards to be used in carrying out the program. Property owned by HUD as a result of acquisition includes REO properties. The goals of HUD's Single Family Property Disposition Program are to reduce the inventory of single-family properties in a manner that minimizes losses to the Mutual Mortgage Insurance Fund (MMIF); promote the expansion of homeownership opportunities for American families by, among other things, selling such properties at a discount to State and local governments and HUD-approved nonprofit entities; and help stabilize distressed communities.

Following the economic and housing crises that began in 2008, the Federal Housing Administration (FHA) determined that it needed to revise, consolidate, and reorganize its property disposition regulations so that they better reflect industry standards, provide greater efficiency in the administration of HUD's property disposition program, and, ultimately, provide HUD the ability to obtain the greatest value for its REO properties in different market conditions. As a result, on October 2, 2015 (80 FR 59690), HUD published a rule that proposed certain changes to part 291. Specifically, HUD proposed the following changes:

1. *Ownership and Disposition Authority.* HUD proposed revising the heading of part 291 from "Disposition of HUD-Acquired Single Family Property" to "Disposition of HUD-Acquired and -Owned Single Family Property" to reflect that HUD not only receives REO properties, but also holds and maintains them throughout the disposition process. For similar reasons, HUD proposed amending § 291.1(a) and § 291.90 to, respectively, reference HUD's authority to acquire and possess properties and prescribe methods of sale and disposal of properties.

2. *Appraisal of HUD REO Properties.* HUD proposed amending § 291.100(b) to clarify that the list price for HUD REO properties may be established utilizing one or more evaluation tools. In addition to aligning requirements for REO appraisers with requirements for appraisers found in 24 CFR part 200, subpart G, to ensure consistency, the rule proposed expanding valuation methods available to include alternative methods commonly used in the real estate industry, such as Broker Price Opinions (BPO) [1] and Automated Valuation Models (AVM).[2]

3. *Escrow Amount Required for Properties Needing Repairs.* HUD proposed increasing to $10,000 the maximum amount that buyers would be required to place into escrow for repairs in order to qualify for FHA mortgage insurance on properties that do not meet FHA's Minimum Property Standards. In addition, to ensure that HUD can keep this amount updated, HUD proposed a provision that would allow HUD to increase or decrease the repair escrow based on changes to the Consumer Price Index [3] by issuing a **Federal Register** notice for comment.

4. *Listings.* HUD proposed amending § 291.100(h) to clarify that HUD has the statutory authority to allow for a number of listings options. Specifically, in addition to asset management and listing contracts, HUD proposed providing that it may dispose of properties using any use method that the Secretary deems appropriate. In addition, HUD proposed revising § 291.100(h)(2)(ii) to require the purchaser's broker to submit bids through HUD's designated electronic bid system rather than through the exclusive broker.

5. *Settlement Cost Assistance Available to Owner-Occupant Purchasers.* HUD proposed removing HUD's obligation to pay the broker's sales commission and clarifying that settlement cost assistance is only available to owner-occupant purchasers and not investor purchasers.

6. *Bidding Process for Competitive Sales.* HUD's October 2, 2015, rule proposed updating the bidding process established under the competitive sales procedures in § 291.205. Specifically, HUD proposed revising § 291.205(k) to provide for winning bids to be made available publicly rather than making them available for inspection at a time and place designated by the HUD local office. In addition, the rule proposed specifying that winning bidders may be notified by their brokers using

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[1] A Broker's Price Opinion (BPO) is the process a hired sales agent utilizes to determine the selling price of a real estate property. BPOs are popularly used in situations where lenders and mortgage companies believe the expense and delay of an appraisal to determine the value of properties is unnecessary. See *https://www.brokerpriceopinion.com.*

[2] Automated valuation model (AVM) is the name given to a service that can provide real estate property valuations using mathematical modeling combined with a database. Most AVMs calculate a property's value at a specific point in time by analyzing values of comparable properties. Some also take into account previous surveyor valuations, historical house price movements, and user inputs (*e.g.,* number of bedrooms, property improvements). Appraisers, investment professionals, and lending institutions use AVM technology in their analysis of residential property. It is a technology-driven report. The product of an automated valuation technology comes from analysis of public record data and computer decision logic combined to provide a calculated estimate of a probable selling price of a residential property.

[3] The Consumer Price Index (CPI) is prepared by the Department of Labor's Bureau of Labor Statistics and is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. For more information, see *http://stats.bls.gov/cpi/home.htm.*

electronic mail and that an executed sales contract will be deemed final when, after being signed by both parties, the executed contract is sent by email rather than via postal service delivery to the successful bidder.

7. *Good Neighbor Next Door (GNND).* Finally, HUD proposed revising the GNND program to provide that law enforcement officers, similar to teachers and firefighters, live in the areas they serve.

II. This Final Rule

This final rule follows publication of the October 2, 2015, proposed rule and takes into consideration the public comments received on the proposed rule. The public comment period on the proposed rule closed on December 1, 2015, and HUD received six comments. The commenters were from a retail home mortgage lender, an organization of professional real property appraisers, an organization that provides appraisals, and members of the public. This section of this preamble presents a summary of the public comments received on the proposed rule, and HUD's responses to the comments. After considering these comments, HUD has decided to adopt the final rule as final with no substantive changes.

Comment: Limiting settlement cost assistance to owner-occupied purchasers will limit broker participation in the REO program. A commenter states that the proposal at § 291.205(b) to remove HUD's obligation to pay the broker's sales commission would be a major shift from the real estate industry. The commenter describes the current process of selling HUD homes as very similar to the traditional real estate market. According to the commenter, HUD's proposal would require that the sales broker ask the buyer to pay commission. This would create a significant difference between the sale and disposition of HUD homes and traditional sales of real estate and would likely deter real estate brokers from participating in the HUD sales process. The commenter also states that such a change would be unique to the HUD property disposition program and not in conformance with industry standards. The commenter suggests an alternative to address commission payouts; specifically, that HUD pay commissions based on the net sales price (Net-to-HUD). According to the commenter, this is a common and accepted practice in the real estate industry and would save hundreds of dollars per transaction and support HUD's goals of reducing inventory and minimizing losses.

HUD Response: The provision in the rule codifies that not all REO property sales transactions are sold through brokers (*e.g.,* auctions, third-party sales at foreclosure, direct sales and, as such, HUD will not pay a commission to brokers for sale transactions that do not involve a real estate broker. For transactions that involve the services of a broker, HUD will pay for services commensurate with the services obtained. For example, for properties that involve a listing and selling agent, HUD will continue to pay brokers a commission of up to 6 percent to market and sell the HUD REO property. Alternately, if a property is being sold through an auction at a pre-foreclosure sale, then HUD will not pay a real estate broker commission. The auction company markets the property and its fee is usually paid as part of the insurance claim.

Comment: HUD's selection of certain agencies to sell properties and provide appraisals does not provide HUD the greatest value for the properties. A commenter states that the entities with which HUD contracts for the sale of properties and for appraisals of these properties use favoritism in selecting agencies to sell the properties and provide the appraisals. According to the commenter, these practices do not benefit HUD in acquiring the greatest value for properties. The commenter recommends that HUD establish a cap that limits acquisition opportunities with these preferred groups, such that it would allow disposition through other agencies and a broader utility of approved appraisers. This, according to the commenter, would provide HUD a marked increase in return on REO properties.

HUD Response: HUD disagrees with the commenter. HUD selects its Asset Manager contractors through a competitive bidding process. HUD does not participate and is not privy to an Asset Manger's selection of its subcontractors, including appraisers. In addition, for Fiscal Years (FY) 2013, 2014, and 2015, HUD received an average of 90 percent of appraisal value for its single-family REO properties. This is a clear indication that the selection criteria used by HUD Asset Manager for selecting appraisers maximizes the recovery rates on HUD single- family REO properties.

Comment: State law may limit real estate licensees from preforming a BPO to value the property. A commenter states that Pennsylvania prohibits real estate licensees from performing a BPO under their licenses if they are not separately licensed as an appraiser. According to the commenter, all that an agent can perform in Pennsylvania is a Competitive Market Analysis (CMA). As a result, the proposed rule would bar HUD or HUD Asset Managers in Pennsylvania from paying a fee to a sales agent for a BPO unless that agent was also a licensed appraiser. The commenter also suggests that other States may have similar prohibitions.

HUD Response: The provision in the rule codifies that HUD may utilize one or more valuation tools to determine the list price on its REO single-family properties. The specific services requested will be ordered only if permitted by State law. For example, if BPOs are not permitted to be performed by a broker, an AVM, CMA, appraisal, or BPO performed by an appraiser may be ordered by HUD's Asset Manager to establish the list price on an REO property.

Comment: HUD should allow servicers to participate in second chance Claims Without Conveyance of Title program. A commenter recommends, based on HUD's goal to reduce its REO inventory, that HUD consider allowing servicers to participate in a second chance program for their properties in post-sale that may not have been part of the Claims Without Conveyance of Title (CWCOT) program at the time of the foreclosure sale. The commenter states that its understanding is that unless loans were part of the original CWCOT program, they cannot be considered for second chance auction. The commenter requests that HUD reconsider this and believes that offering this opportunity to servicers will assist in meeting HUD's goal of reducing inventory and minimizing losses. According to the commenter, such a change would also reduce HUD staffing and contract expenses, and would benefit communities and tax authorities, which would see a positive benefit as homes would be reoccupied more quickly, properties better maintained, and taxes and HOA and condominium fees paid. The commenter also states that this would also reduce the servicer's labor costs and out of pocket expenses.

HUD Response: HUD appreciates the commenter's recommendation; however, this rule does not affect CWCOT procedures. Rather, Mortgagee Letter 2014–24, Increasing Use of FHA's Claims Without Conveyance of Title (CWCOT) Procedures,[4] establishes the criteria for post-foreclosure, second chance sales efforts. The Mortgagee Letter provides mortgagees with instructions on accessing and utilizing the Commissioner's Adjusted Fair Market Value, which must be used for all foreclosure sales and post-foreclosure sales efforts. The mortgagee must determine the competitive and non-competitive Commissioner's Adjusted Fair Market Value (CAFMV) at the same time. Essentially, in the event a property does not sell to a third party at the foreclosure sale, mortgagees may pursue additional sales efforts (and may utilize independent third-party providers to conduct such sales) prior to making a final decision to convey the property to HUD. A mortgagee's decision to pursue additional sales efforts, subsequent to the foreclosure sale, does not relieve the mortgagee of its responsibility to convey a property to HUD within the required timeframe stated in § 203.359, unless a sales contract has been ratified. Where a sales contract has been ratified, the mortgagee will be granted a 30-day extension of the deadline for conveyance. As such, the Department encourages mortgagees to pursue additional sales efforts concurrently with their preconveyance processes to ensure that, in the event conveyance is necessary, the mortgagee is able to fully comply with FHA's conveyance timeframe. In the event a non-competitive CAFMV is used for the foreclosure sale, as in some judicial states, the competitive CAFMV value may be utilized for the post-foreclosure sales effort, if the requirements for competitive post-foreclosure sales are met.

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[4] Mortgagee Letter 2014–24 is available at *http://portal.hud.gov/hudportal/documents/huddoc?id=14–24ml.pdf.*

Comment: HUD needs to adopt a direct conveyance model. A commenter expresses support for HUD's proposed rule, stating that the changes will equip HUD with additional tools necessary to increase the efficiency and effectiveness of its REO sales program and that the changes to HUD REO property appraisals and maximum escrow amounts for properties needing repairs will bring FHA practices a step closer to conformance with industry standards. The commenter states, however, that until FHA adopts a direct conveyance model, both its REO sales process and broader property preservation policy will continue to lag behind industry standards. Specifically, the commenter states that while creating and implementing a direct conveyance model is a significant undertaking, such a model would expand the same benefits HUD claims the proposed changes will confer on the market: FHA will be able to move properties to REO more quickly, at a reduced cost, while increasing the value of the MMIF. Ultimately, FHA will gain more flexibility in selling properties in "as-is" condition. The commenter states, however, that the changes proposed by this rule represent first steps toward such a model.

HUD Response: HUD appreciates the commenter's support of the changes proposed by HUD, but disagrees that HUD needs a direct conveyance model to increase the efficiency and effectiveness of its REO sales program. FHA does not buy, sell, or securitize FHA loans and, as such, does not own a loan secured by an FHA mortgage on the foreclosure sales date. A direct conveyance model does not ensure that HUD has marketable title on a property insured by an FHA mortgage at the foreclosure sale or the property does not have damages that should be repaired by the lender prior to conveyance.

If a property is not sold to a third party at the foreclosure sale, the lender obtains title. Once the lender ascertains that it has marketable title and the property is in conveyance condition, the lender files a claim for insurance benefits and the deed is recorded in HUD's name. HUD's current conveyance model provides HUD with reasonable assurance that there are no encumbrances to a conveyed property that will prevent HUD from efficiently and effectively maintaining and marketing an REO property until it is sold.

Comment: BPOs are unregulated and performed by individuals with little oversight or training and HUD should require one independent appraisal. A commenter, focusing on § 291.100(b), cautions that BPOs are largely unregulated and are performed with little oversight and training. More specifically, the commenter states that BPO preparers have little valuation-specific education, training, and testing requirements, and do not adhere to generally accepted valuation standards. The commenter also states that AVMs are essentially statistical algorithms, reliant on public record data, which are often outdated and/or inaccurate. According to the commenter, AVMs are also historically weak in nonconforming markets, as individual property and local market conditions are largely overlooked. As a result, the commenter states that HUD should require at least one independent appraisal. This, according to the commenter, would be generally consistent with requirements imposed by Federal bank regulatory agencies, which require a current appraisal or evaluation for REO purposes.

HUD Response: HUD disagrees. Most sellers do not obtain an appraisal to determine the list price of their properties. Generally, the listing agent prepares a CMA. Currently, HUD orders an appraisal as a valuation tool in determining the list price of its REO properties. The appraisal is not always the sole basis of determining the list price. This final rule provides HUD with the flexibility of using one or more other valuation tools to establish the list price on its REO single-family properties. Since the competitive market ultimately determines the sales price for HUD REO properties in markets where the AVM, BPOs, etc., values have historically been within a relevant range of appraisal values HUD may determine that it is not cost beneficial for HUD to order appraisals for establishing the list prices.

Comment: Independent appraisals are essential to protecting the taxpayer and the MMIF. The commenter also states that the use of an independent appraisal will protect taxpayers from distressed sales below market value and help ensure that local communities do not have properties dumped on the market at below market prices. According to the commenter, quality appraisals are essential if HUD plans to reduce the inventory of single-family properties in a manner that minimizes losses to the MMIF. The commenter recommends that the final rule include a basic requirement for at least one appraisal prepared for REO purposes to protect taxpayers and local communities.

HUD Response: HUD disagrees with the commenter. As HUD states in response to an earlier comment, most sellers do not obtain an appraisal to determine the list price of their properties. This final rule provides HUD with the flexibility of using one or more other valuation tools to establish the list price on its REO single-family properties. Since, the competitive market ultimately determines the sales price for HUD REO properties, in markets where the AVM, BPOs, etc., values have historically been within a relevant range of appraisal values, HUD may determine that it is not cost beneficial for HUD to order appraisals for establishing the list prices. Properties that are security for mortgages to be insured by FHA are appraised to protect the insurance funds. In neighborhoods where FHA has insured a significant number of mortgages, there is an incidental benefit of preventing strategic default based on inflated values. Additionally, as a by-product, HUD's strategic goal of strengthening the nation's housing market to bolster the economy and protect consumers is advanced.

Comment: HUD should require two value opinions in the case of a *disposition.* The commenter also states that in the case of a disposition, HUD would benefit from obtaining two value opinions from real estate appraisal professionals; one for the current market value and one for the property's liquidation value. According to the commenter, such appraisals are common throughout the real estate sector and can be capably prepared by residential appraisal professionals. The commenter suggests that the Liquidation Value Addendum, published by the Appraisal Institute, would help HUD understand the range of risk exposure, with the liquidation value helping to illustrate the worst case scenario. The commenter states that such services would provide cost-effective alternatives to less credible services such as AVMs and BPOs. The commenter also recommends that, if HUD is not utilizing them today, it considers doing so before turning to less credible alternatives.

HUD Response: HUD disagrees. As HUD states in response to an earlier comment, for FY 2013, FY 2014, and FY 2015, HUD's average sales price as a percentage of appraised value was 90 percent. HUD believes that ordering a Liquidation Value Addendum from an appraiser as an additional cost is not cost effective. A liquation value is often obtained from the listing agent through a CMA as part of the listing broker commission to support price adjustments.

BPOs, CMAs, and AVMs are widely used by various market participants. HUD believes that when two or more of these valuation tools are within a relevant range, the values are generally regarded as reliable.

Currently, HUD orders an appraisal as a valuation tool in determining the list price of its REO properties. The appraisal is not always the sole basis of determining the list price. The rule provides HUD with the flexibility of using one or more other valuation tools to establish the list price on its REO single-family properties. Since, the competitive market ultimately determines the sales price for HUD REO properties, in markets where the AVM, BPO, etc., values have historically been within a relevant range of appraisal values, HUD may determine that it is not cost beneficial for HUD to order appraisals for purposes of establishing the list prices.

Comment: HUD should expand the list of valuation services available. Finally, the commenter recommends that, HUD should insist on expanding the range of valuation services available to the agency, the list be expanded to include nontraditional valuation services performed by real estate appraisers that are commonly utilized in asset management and disposition. That list, according to the commenter, should include, at a minimum, opinions of market value and liquidation or disposition value by appraisers, drive-by appraisals, and desktop appraisals, in addition to interior inspection appraisals. According to the commenter, this would provide HUD with the full range of valuation services that are available in the conventional market.

HUD Response: The final rule provides examples of valuation methods that may be used. The list is not all-inclusive and enables HUD to use valuations tools that are currently in existence or that are developed in the future, as appropriate.

III. Findings and Certifications

Executive Order 12866 and Executive Order 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

The majority of the changes made by this final rule streamline HUD's property disposition program by bringing its practices into conformance with industry standards and allowing HUD to administer its Single Family Property Disposition Program more efficiently and more effectively. These changes do not create additional significant burdens for the public. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not have a significant economic impact on a substantial number of small entities. HUD defines "small supervised lenders" as those depository institutions that are regulated by the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, and which have a depository asset base of less than $500 million.[5]

This rule final rule codifies changes to the administration of HUD's property disposition and acquisition activities carried out as part of the FHA insurance program for one-to-four family homes. These changes include limiting the provision of settlement cost assistance to owner-occupants, providing HUD flexibility to run the bidding process for REO properties, changes to the direct sales process, additional flexibility to list properties electronically, changes to the required escrow amount for purchasers obtaining property not meeting HUD's property standards, and clarifications in the rule governing HUD's appraisal process. These changes streamline HUD's administration of its Single Family Property Disposition Program and reflect industry practice. For these reasons, HUD has determined that this final rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0306. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to environment has been made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of National Environmental Policy Act (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

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[5] Of HUD's 1,459 supervised lenders, 598 are considered, by HUD, to be "small supervised lenders."

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on State and local governments and is not required by statute or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble above, HUD amends 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED AND -OWNED SINGLE FAMILY PROPERTY

■ 1. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*, 42 U.S.C. 1441, 1441a, 1551a and 3535(d)

■ 2. Revise the heading of part 291 to read as set forth above.

■ 3. Revise § 291.1(a)(1) to read as follows:

§ 291.1 Purpose and general requirements.

(a) * * *

(1) This part governs the acquisition, possession, and disposition of one-to-four family properties acquired by the Federal Housing Administration (FHA) through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act, or acquired by HUD under section 204(g) of the National Housing Act (12 U.S.C. 1710(g)). HUD will issue detailed policies and procedures that must be followed in specific areas.

* * * * *

■ 4. Amend § 291.5 by removing paragraph (a) and the introductory text of paragraph (b), adding introductory text to the section, and adding alphabetically the definition of "Secretary" as follows:

§ 291.5 Definitions.

Terms used in this part are defined as follows:

* * * * *

Secretary is defined in 24 CFR 5.100.

* * * * *

■ 5. Amend § 291.90 by revising the introductory text to read as follows:

§ 291.90 Sales methods.

In accordance with section 204(g) of the National Housing Act (12 U.S.C. 1710(g)), HUD will prescribe the terms and conditions for all methods of sale. HUD may dispose of assets using any method that the Secretary deems appropriate, including, but not limited to the following:

* * * * *

■ 6. Amend § 291.100 by revising the section heading and paragraphs (b), (c), (d), and (h) to read as follows:

§ 291.100 General policy on HUD acquisition, ownership, and disposition of real estate assets.

* * * * *

(b) *List price.* The list price, or "asking price," assigned to the property is based upon one or more evaluation tools (*e.g.*, appraisal, Broker Price Opinion, Automated Valuation Model). An appraisal, when used, must be conducted by an independent real estate appraiser who meets all of the requirements of 24 CFR part 200, subpart G, and is in good standing on the appraiser roster established under that section. The appraiser must provide an opinion of the "as-is" market value using a valuation method that is commonly employed in the industry and that is consistent with FHA appraisal requirements.

(c) *Insurance.* When listing properties, HUD may elect to include information to indicate whether the property is eligible for FHA-insured financing under section 203(B) of the National Housing Act (12 U.S.C. 1709(b)).

(d) *Financing.* (1) Subject to underwriting requirements, REO properties that have not been identified as uninsurable in accordance with paragraph (c) of this section can be purchased and financed with a mortgage insured under section 203(b) or 203(k) of the National Housing Act (12 U.S.C. 1709(b), 1709(k)), if supported by an FHA appraisal, in one of the following ways:

(i) *Insured.* A property that meets the Minimum Property Standards (MPS), as defined in HUD Handbook 4905.1 or any successor handbook, as determined by the Secretary, for existing dwellings will be offered for sale in "as-is" condition with FHA mortgage insurance available as provided in part 203 of this chapter.

(ii) *Insured with repair escrow.* (A) A property that requires no more than $10,000 for repairs to meet the MPS, as defined in HUD Handbook 4905.1 or any successor handbook, as determined by the Secretary, will be offered for sale in "as-is" condition with FHA mortgage insurance available, as provided in part 203 of this chapter, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs.

(B) *Changes in repair escrow.* HUD may adjust the escrow balance required under this paragraph based on changes to the Consumer Price Index by publishing a **Federal Register** notice that provides for a public comment period of 30 calendar days for the purpose of accepting comments on the amount of the change. After comments have been considered, HUD will publish a final notice announcing the revised escrow amounts.

(iii) *Insured with rehabilitation loan* in accordance with section 203(k) of the National Housing Act and pursuant to § 203.50 of this chapter.

(2) REO properties that have been identified as uninsurable in accordance with paragraph (c) of this section can be purchased and financed with a mortgage insured under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)), subject to underwriting requirements supported by an FHA-specified appraisal and in accordance with 24 CFR 203.50.

(3) HUD, in its sole discretion and subject to appropriations, may take back Purchase Money Mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income.

When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed 5 years. Mortgagors must meet FHA mortgage credit standards.

(i) For purposes of this section, the term "purchase money mortgage," or PMM means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

(ii) Except as provided in paragraph (d)(3) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

* * * * *

(h) Any real estate broker who has agreed to comply with HUD requirements may be eligible to participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker. In accordance with section 204(g) of the National Housing Act (12 U.S.C. 1710(g)), HUD will prescribe the terms and conditions for all methods of listing properties. HUD may dispose of properties using any method that the Secretary deems appropriate, including, but not limited to the following:

(1) *Open listings.* Properties may be sold on an open listing basis with participating real estate brokers.

(2) *Asset management and listing contracts.* (i) HUD may invite firms experienced in property management to compete for contracts that provide for an exclusive right to manage and list specified properties in a given area.

(ii) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. The purchaser's broker must submit the bid through HUD's designated electronic bid system.

■ 7. Amend § 291.205 by revising the introductory text and paragraphs (b), (k)(1), (k)(2), and (l) to read as follows:

§ 291.205 Competitive sales of individual properties.

When HUD conducts competitive sales of individual properties to individual buyers, it will generally sell the properties on an "as-is" basis, without repairs or warranties, and it will follow the sales procedures provided in this section.

* * * * *

(b) *Net offer.* (1) The net offer is calculated by subtracting from the bid price the dollar amounts for the financing and loan closing costs and the broker's sales commission, as described in paragraph (b)(2) of this section.

(2) If an owner-occupant purchaser of the property requests in the bid, HUD may pay all or a portion of the financing and loan closing costs, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the total amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties. No assistance for financing and loan closing costs or for the broker's sales commission will be provided to investor purchasers.

(k) * * *

(1) The Secretary will make all winning bids available publicly.

(2) Successful bidders will be notified through their real estate brokers by electronic mail, mail, telephone, or other means. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract, signed by both the submitting real estate broker and the prospective purchaser, and sending a copy of the executed contract by electronic mail to the successful bidder or the bidder's agent.

(l) *Counteroffers.* HUD may present counteroffers during competitive bid periods, as it deems appropriate to minimize losses to its insurance fund. "Best and Final" offers requested by HUD are considered counteroffers.

■ 8. Revise § 291.500 to read as follows:

§ 291.500 Purpose.

This subpart describes the policies and procedures governing the Good Neighbor Next Door (GNND) Sales Program. The purpose of the GNND Sales Program is to improve the quality of life in distressed urban communities. This is to be accomplished by encouraging law enforcement officers, teachers, and firefighters/emergency medical technicians to purchase and live in homes that are located in the same communities where they perform their daily responsibilities and duties.

■ 9. Revise § 291.505 to read as follows:

§ 291.505 Definitions.

For purposes of this subpart:

Locality means the community, neighborhood, or jurisdiction of the unit of general local government, or Indian tribal government;

Unit of general local government means a county or parish, city, town, township, or other political subdivision of a State.

■ 10. Amend § 291.520 by removing "and" from the end of paragraph (a), removing the period and adding ";and" in its place at the end of paragraph (b), and adding paragraph (c) to read as follows:

§ 291.520 Eligible law enforcement officers.

* * * * *

(c) The full-time employment in paragraph (a) of this section must, in the normal course of business, directly serve the locality in which the home is located.

■ 11. Revise § 291.525(b) to read as follows:

§ 291.525 Eligible teachers.

* * * * *

(b) The full-time employment in paragraph (a) of this section must, in the normal course of business, serve students from the locality where the home is located.

■ 12. Revise § 291.530 to read as follows:

§ 291.530 Eligible firefighter/emergency medical technicians.

A person qualifies as a firefighter/emergency medical technician for the purposes of the GNND Sales Program if the person is:

(a) Employed full-time as a firefighter or emergency medical technician by a fire department or emergency medical services responder unit of the Federal Government, a State, unit of general local government, or an Indian tribal government; and

(b) The full-time employment in paragraph (a) of this section must, in the normal course of business, directly serve the locality where the home is located.

Dated: August 5, 2016.

Edward L. Golding,

Principal Deputy, Assistant Secretary for Housing.

Approved: August 5, 2016.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2016–19132 Filed 8–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0739]

RIN 1625–AA00

Safety Zone; Pittsburgh Steelers Fireworks; Allegheny River Mile 0.0–0.25, Ohio River Mile 0.0–0.1, Monongahela River Mile 0.0–0.1, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Pittsburgh.

DATES: This rule is effective on August 12, 2016 from 9:30 p.m. until 11:30 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0739 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

This safety zone and fireworks displays are included in the list of annually recurring safety zones published in 33 CFR 165.801, Table 1, No. 59 as occurring on Sunday, Monday, or Thursday from September through January each year following Pittsburgh Steelers home games. For this year, the event sponsor is conducting an additional barge-based fireworks display on August 12, 2016 and that display and required safety zone location are not included in the published regulations. This temporary final rule establishes that safety zone.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because the Coast Guard received notice on July 25, 2016 that this additional fireworks display would take place. After receiving and fully reviewing the event information, circumstances, and exact location, the Coast Guard determined that a safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display on the navigable waterway. It would be impracticable to complete the full NPRM process for this safety zone because it needs to be established by August 12, 2016. The fireworks display has been advertised and the local community has prepared for the event.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to public interest of ensuring the safety of spectators and vessels during the event. Immediate action is necessary to prevent possible loss of life and property during the hazards created by a barge-based fireworks display near and over the navigable waterway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that a safety zone is needed on August 12, 2016.This rule is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone on August 12, 2016 from 9:30 p.m. until 11:30 p.m. The safety zone will cover all navigable waters on the Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based firework display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a small portion of the waterway for a limited duration of less than two hours in the evening. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue broadcast notices to mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less then two hours that will prohibit entry to the Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1during the barge-based firework event. It is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0739 to read as follows:

§ 165.T08–0739 Safety Zone; Pittsburgh Steelers Fireworks; Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: Pittsburgh Steelers Fireworks; Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1, Pittsburgh, PA.

(b) *Enforcement.* This rule will be enforced, from 9:30 p.m. until 11:30 p.m. on August 12, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the COTP or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the COTP or their designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) *Information Broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

L. McClain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2016–19128 Filed 8–10–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2016–0408; FRL–9950–48–OAR]

RIN 2060–AS89

Technical Correction to the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to make a technical correction to an equation in an appendix in the National Ambient Air Quality Standards (NAAQS) for Particle Pollution. Equation 2 describes an intermediate step in the calculation of the design value for the annual $PM_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) NAAQS. This action corrects a scrivener's error in one of the equations used to calculate an annual mean $PM_{2.5}$ concentration, to properly account for cases where a site does not have four complete quarters of data and passes one of two substitution tests. This change accurately reflects the intended calculation of the annual mean $PM_{2.5}$ design value and is consistent with the text elsewhere in the appendix.

DATES: This rule is effective on October 11, 2016 without further notice, unless the EPA receives adverse comment by September 12, 2016. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0408, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* on the Web, Cloud, or other file sharing system).

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mr. Brett Gantt, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Air Quality Analysis Group (Mail Code: C304–04), Research Triangle Park, NC 27711; telephone number: (919) 541–5274; fax number: (919) 541–3613; email address: *gantt.brett@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. This action corrects a scrivener's error in an intermediate equation in the calculation of the annual $PM_{2.5}$ design value to properly account for cases where a site does not have four complete quarters of data in a specific year and passes the minimum quarterly value substitution test. In the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate proposed rule to correct this scrivener's error if any adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

B. Does this action apply to me?

This action applies to you if you are calculating the annual $PM_{2.5}$ design value for a site which does not have four complete quarters of data for a specific year and passes the minimum quarterly value substitution test.

C. What should I consider as I prepare my comments for the EPA?

(1) *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

(2) *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. This Action

On December 14, 2012, the EPA revised the NAAQS for Particle Pollution (78 FR 3086). Appendix N to part 50 of this document described the data handling conventions and computations necessary for determining when the NAAQS for $PM_{2.5}$ are met. Section 4.4 described the annual $PM_{2.5}$ design value calculations, with equations 1, 2, and 3 used to calculate the quarterly, annual, and 3-year average concentrations. Equation 2 erroneously described the annual mean as the average of the four quarterly values despite the availability of substitution tests for cases when quarterly values do not meet the completeness requirements in section 4.1.

Specifically, the minimum quarterly value substitution test described in section 4.1(c)(i) allows for a valid annual $PM_{2.5}$ design value to be calculated when a test design value, having deficient quarters substituted with quarter-specific low values, is found to be greater than the level of the standard. If the minimum quarterly value substitution test is passed, the annual $PM_{2.5}$ design value is calculated from annual means of the non-deficient quarterly values, which can range in number from one to four for a specific year.

As currently written, equation 2 is not appropriate for use during a minimum quarterly value substitution test and does not accurately reflect the intended calculation of the annual mean $PM_{2.5}$ concentration in these cases.[1] Therefore, this action generalizes equation 2 to account for cases that pass the minimum quarterly value substitution test, yet do not have four non-deficient quarterly values in each of the years in the 3-year design value period. This technical correction to equation 2 is currently used in the calculation of the $PM_{2.5}$ annual design value, is consistent with the text of section 4.1 within appendix N to part 50, and does not affect the calculation of annual mean $PM_{2.5}$ concentrations when four complete quarters of data are available.

III. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action generalizes the calculation of the annual $PM_{2.5}$ NAAQS design values and does not impose additional regulatory requirements on organizations monitoring air quality.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action corrects the calculation of annual mean $PM_{2.5}$ concentrations and does not impose additional regulatory requirements on sources.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This regulatory action is a technical correction to a previously promulgated regulatory action and does not have any impact on human health or the environment. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action is a technical correction to a previously promulgated regulatory action and does not have any impact on human health or the environment.

K. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 3, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

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[1] If read literally with the scrivener's error, it would be erroneous to use Equation 2 to calculate the annual $PM_{2.5}$ NAAQS for any year with a deficient quarter of data because the equation instructs the user to sum all *four* quarters when at least one of those quarters contains missing data.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In appendix N to part 50, in section 4.4, Equation 2 is revised to read as follows:

Appendix N to Part 50—Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$

* * * * *

4.4 *Equations for the Annual $PM_{2.5}$ NAAQS*

* * * * *

(b) * * *

Equation 2

$$\bar{X}_y = \frac{1}{n_{Q,y}} \sum_{q=1}^{n_{Q,y}} \bar{X}_{q,y}$$

Where:

$\bar{X}_y$ = the annual mean concentration for year y (y = 1, 2, or 3);

n_{Qy} = the number of complete quarters Q in year y; and

$\bar{X}_{qy}$ = the mean for quarter q of year y (result of equation 1).

* * * * *

[FR Doc. 2016–19034 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0539; FRL–9950–29–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Prevention of Significant Deterioration and Approval of Infrastructure State Implementation Plans for Specific National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the West Virginia Department of Environmental Protection (WVDEP) for the State of West Virginia on June 3, 2015. This revision pertains to West Virginia's Prevention of Significant Deterioration (PSD) permit program regulations for preconstruction permitting requirements for major sources. The revision includes a change in West Virginia's PSD regulations related to emissions of fine particulate matter ($PM_{2.5}$). The State's June 3, 2015 submittal satisfies its obligations pursuant to an earlier rulemaking in which EPA granted final conditional approval of West Virginia's PSD implementing regulations. This action also addresses specific infrastructure program elements specified in Clean Air Act (CAA) section 110(a)(2) necessary to implement, maintain, and enforce several national ambient air quality standards (NAAQS). This action is being taken under the CAA.

DATES: This final rule is effective on September 12, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2015–0539. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Wentworth, (215) 814–2183, or by email at *Wentworth.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 2016 (81 FR 1133), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. In the NPR, EPA proposed approval of a revision to West Virginia's PSD permit program regulations for preconstruction permitting requirements for major sources. The revision includes revised West Virginia PSD regulations related to emissions of $PM_{2.5}$. The formal SIP revision was submitted by the State of West Virginia on June 3, 2015.

II. Summary of SIP Revision

The SIP revision submitted by WVDEP on June 3, 2015 pertains to revisions to its PSD permit program regulations at 45CSR14–16.7.c that establish a significant monitoring concentration (SMC) value of zero micrograms per cubic meter for $PM_{2.5}$. The submission of this revision allows EPA to change its conditional approval of 45CSR14 to a full approval. Because this submission fulfills the commitment made by West Virginia in the final conditional approval of West Virginia's earlier submittals of revisions to 45CSR14 as discussed in the NPR, EPA is now fully approving West Virginia's PSD regulations at 45CSR14 in its entirety as 45CSR14 meets requirements in the CAA and its implementing regulations and removing the prior conditional approval. *See* 80 FR 36483 (final conditional approval of prior SIP submissions of revisions to 45CSR14).

With its submittal, West Virginia has made all of the changes to its PSD implementing regulations necessary to address $PM_{2.5}$ as prescribed by the CAA, 40 CFR 51.166, and the May 16, 2008 new source review implementation rule for $PM_{2.5}$ at 73 FR 28321. Because West Virginia's regulations at 45CSR14 fully meet the federal requirements for PSD in the CAA, EPA also found that West Virginia's PSD program now addresses specific PSD-related portions of the infrastructure program elements in section 110(a)(2) of the CAA for the 1997 ozone and $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 2008 lead and ozone NAAQS, and the 2010 nitrogen dioxide (NO_2) and sulfur dioxide (SO_2) NAAQS. Other specific requirements of and the rationale for EPA's approval action of West Virginia's revised PSD regulations and relevant infrastructure SIP revisions for several NAAQS are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving this SIP revision submitted by WVDEP as a revision to the West Virginia SIP for its PSD program and removing a prior conditional approval on the PSD program. In this action, EPA is also approving several of West Virginia's infrastructure SIP revisions as meeting the PSD elements of section 110(a)(2) of the CAA for the 1997 ozone and $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 2008 lead and ozone NAAQS, and the 2010 NO_2 and SO_2 NAAQS.

IV. Incorporation by Reference

In this rule the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of 45CSR14–16.7.c, described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action which revises West Virginia's PSD regulations related to emissions of $PM_{2.5}$ and which approves portions of several infrastructure SIPs as addressing PSD elements in CAA section 110(a)(2) may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 25, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

■ 2. In § 52.2520:

■ a. The table in paragraph (c) is amended by revising the entries for 45CSR Series 14.

■ b. The table in paragraph (e) is amended by revising the entries for:

■ i. Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS,

■ ii. Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS,

■ iii. Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS,

■ iv. Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS,

■ v. Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS,

■ vi. Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS, and

■ vii. Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS.

The revised text reads as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/Subject	State effective date	EPA Approval date	Additional explanation/ Citation at 40 CFR 52.2565
*	*	*	*	*
[45CSR] Series 14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration				
Section 45–14–1	General	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–2	Definitions	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–3	Applicability	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–4	Ambient Air Quality Increments and Ceilings	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–5	Area Classification	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–6	Prohibition of Dispersion Enhancement Techniques.	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–7	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications.	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–8	Requirements Relating to Control Technology	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–9	Requirements Relating to the Source's Impact on Air Quality.	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–10	Modeling Requirements	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–11	Air Quality Monitoring Requirements	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–12	Additional Impacts Analysis Requirements	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–13	Additional Requirements and Variances for Source Impacting Federal Class 1 Areas.	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–14	Procedures for Sources Employing Innovative Control Technology.	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–15	Exclusions From Increment Consumption	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–16	Specific Exemptions	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–17	Public Review Procedures	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–18	Public Meetings	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–19	Permit Transfer, Cancellation and Responsibility.	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–20	Disposition of Permits	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–21	Conflict with Other Permitting Rules	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	

EPA–APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/Subject	State effective date	EPA Approval date	Additional explanation/ Citation at 40 CFR 52.2565
Section 45–14–25	Actual PALs	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
Section 45–14–26	Inconsistency Between Rules	06/01/2015	08/11/2016, [Insert **Federal Register** citation].	
* * * * * * *				

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
* * * * * * *				
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	12/3/07, 5/21/08	8/4/11, 76 FR 47062	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		12/3/07, 12/11/07, 8/31/11.	10/17/12, 77 FR 63736.	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
		6/1/2015	8/11/2016, [Insert **Federal Register** citation].	Approval of PSD-related element 110(a)(2)(D)(i)(II). *See* § 52.2520.
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	4/3/08, 5/21/08, 7/9/08, 3/18/10.	8/4/11, 76 FR 47062	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		12/11/07, 4/3/08, 8/31/11.	10/17/12, 77 FR 63736.	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
		6/1/2015	8/11/2016, [Insert **Federal Register** citation].	Approval of PSD-related element 110(a)(2)(D)(i)(II). *See* § 52.2520.
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	Statewide	10/1/09, 3/18/10	8/4/11, 76 FR 47062	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		10/1/09, 8/31/11	10/17/12, 77 FR 63736.	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. *See* § 52.2522(i).
		6/1/2015	8/11/2016, [Insert **Federal Register** citation].	Approval of PSD-related element 110(a)(2)(D)(i)(II). *See* § 52.2520.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	Statewide	10/26/11	9/10/12, 77 FR 55417	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
		8/31/11, 10/26/11	10/17/12, 77 FR 63736.	Approval of the following elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
		6/1/2015	8/11/2016, [Insert **Federal Register** citation].	Approval of PSD-related element 110(a)(2)(C), (D)(i)(II), and (J). *See* § 52.2520.
Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	Statewide	8/31/11, 2/17/12	10/17/12, 77 FR 63736.	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
		2/17/12	4/7/2014, 79 FR 19001	This action addresses the following CAA elements, or portions thereof: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/24/14	3/9/15, 80 FR 12348	Addresses CAA element 110(a)(2)(E)(ii).
		6/1/2015	8/11/2016, [Insert **Federal Register** citation].	Approval of PSD-related element 110(a)(2)(C), (D)(i)(II), and (J). *See* § 52.2520.
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS.	Statewide	12/13/12	1/22/14, 78 FR 3504	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
		7/24/14	3/9/15, 80 FR 12348	Addresses CAA element 110(a)(2)(E)(ii).
		6/1/2015	8/11/2016, [Insert **Federal Register** citation].	Approval of PSD-related element 110(a)(2)(C), (D)(i)(II), and (J). *See* § 52.2520.
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS.	Statewide	6/25/13	10/16/14, 79 FR 62035.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C) (enforcement and minor new source review), (D)(ii), (E)(i) and (iii), (F), (G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M).
		7/24/14	3/9/15, 80 FR 12348	Addresses CAA element 110(a)(2)(E)(ii).
		6/1/2015	8/11/2016, [Insert **Federal Register** citation].	Approval of PSD-related element 110(a)(2)(C), (D)(i)(II), and (J). *See* § 52.2520.
*	*	*	*	* * *

[FR Doc. 2016–18518 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0144; FRL–9944–48]

Aminocyclopyrachlor; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of aminocyclopyrachlor in or on milk and livestock commodities imported into the United States, which are identified and discussed later in this document. E.I. du Pont de Nemours and Company requested these tolerances under the

Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 11, 2016. Objections and requests for hearings must be received on or before October 11, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0144, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/test-guidelines-pesticides-and-toxic-substances.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0144 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 11, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0144, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of Tuesday, March 29, 2011 (76 FR 17376) (FRL–8867–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7817) by E.I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide aminocyclopyrachlor, 6-amino-5-chloro-2-cyclopropyl-4-pyrimidinecarboxylic acid, and aminocyclopyrachlor methyl ester, methyl 6-amino-5-chloro-2-cyclopropyl-4-pyrimidinecarboxylate, expressed as aminocyclopyrachlor, in or on grass, forage at 65 parts per million (ppm); grass, hay at 125 ppm; fat (of cattle, goat, horse, and sheep) at 0.07 ppm; meat (of cattle, goat, horse, and sheep) at 0.02 ppm; meat byproducts, excluding liver (of cattle, goat, horse, and sheep) at 0.4 ppm; liver (of cattle, goat, horse, and sheep) at 0.06 ppm; and milk at 0.035 ppm. That document referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

After issuance of the notice of filing, the registrant revised the petition by rescinding the proposed grass commodities and amending the purpose of establishing tolerances from domestic to import use (*i.e.* import tolerances).

Based upon review of the data supporting the petition, EPA has lowered the proposed tolerances for milk, meat (of cattle, goat, horse, and sheep), and fat (of cattle, goat, horse, and sheep) and changed the proposed tolerances from liver and meat byproducts, except liver (of cattle, goat, horse, and sheep) to meat byproducts (of cattle, goat, horse, and sheep). The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for aminocyclopyrachlor including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with aminocyclopyrachlor follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Aminocyclopyrachlor

Aminocyclopyrachlor (parent acid) has low acute toxicity by all routes of exposure (oral, dermal, inhalation), does not cause skin irritation or skin sensitization, but causes mild eye irritation. There are no target organs of toxicity for aminocyclopyrachlor. In the subchronic oral toxicity studies in rats, mild systemic toxicity effects of decreased body weights, body weight gains, food consumption, and food efficiency in both sexes were observed with repeated exposures at very high (limit) doses. There was no appreciable increase in the severity of these effects with time. The most sensitive species is the rat. Subchronic and chronic dietary studies in dogs and mice showed no adverse effects at all treatment doses including the limit dose. The subchronic dermal toxicity study in rat showed no evidence of toxicity at the limit dose. Subchronic inhalation toxicity studies are not available; however, based on the results of the acute inhalation studies showing low toxicity at twice the limit concentration, the likelihood of subchronic toxicity via inhalation route is expected to be low.

In the prenatal developmental toxicity study, there were no adverse effects of aminocyclopyrachlor on prenatal development or maternal health in rats at all treatment doses including the limit dose. In the rabbit study, administration at the limit dose resulted in one treatment-related death and two abortions which were considered secondary effects to maternal weight losses which occurred over a period of 5 to 7 days. No developmental effects were observed in the offspring. There were no adverse effects of aminocyclopyrachlor on reproduction and fertility in rats at the limit dose. Toxicity in parental rats and offspring was limited to decreases in body weights at the limit dose.

Aminocyclopyrachlor is classified as ''Not Likely to be Carcinogenic to Humans.'' This classification is based on no treatment-related tumors seen in male or female rats or mice at doses that were adequate to assess carcinogenicity, and no evidence of mutagenicity from a full battery of *in vitro* and *in vivo* genotoxicity studies. There was no evidence of neurotoxicity or immunotoxicity observed in the rodent studies up to the limit dose.

Aminocyclopyrachlor-Methyl

The toxicity database for aminocyclopyrachlor-methyl (ester) via the oral route of exposure is bridged with aminocyclopyrachlor (parent acid) based on evidence from metabolism studies, acute toxicity studies, and repeat-dose toxicity studies with common endpoints. The rat metabolism studies showed that aminocyclopyrachlor-methyl rapidly metabolizes (within 30 minutes) to aminocyclopyrachlor. A full suite of acute toxicity studies conducted with aminocyclopyrachlor and aminocyclopyrachlor-methyl resulted in the same toxicity category classifications. The subchronic oral toxicity study and the modified one-generation reproduction toxicity study in rats conducted with aminocyclopyrachlor-methyl showed effects of decreased body weights and body weight gains at the limit dose similar to those observed in the aminocyclopyrachlor studies. This one-generation reproduction study showed no evidence of reproductive, developmental, or neurotoxicity at the limit dose. There was no evidence of mutagenicity in the *in vitro* bacterial genotoxicity test conducted with aminocyclopyrachlor-methyl. The results of these studies show that aminocyclopyrachlor-methyl causes effects similar to aminocyclopyrachlor at the same dose levels. Therefore, studies conducted with aminocyclopyrachlor can be used to support aminocyclopyrachlor-methyl.

Cyclopropane Carboxylic Acid

Cyclopropane carboxylic acid (CPCA), also known as IN–V0977, is an environmental photolytic degradate of aminocyclopyrachlor present only in surface water. CPCA has a different mode of toxic action than aminocyclopyrachlor and aminocyclopyrachlor-methyl. Based on extensive pre-clinical studies of the anxiolytic drug candidate panadiplon, which metabolizes to CPCA after oral administration, the target organ is the liver, causing impairment of mitochondrial function by inhibiting the beta oxidation of fatty acids, resulting in microvesicular steatosis (accumulation of small fat droplets in cells) that is often accompanied by liver necrosis and inflammation, decreased hepatic glycogen, and decreased blood glucose levels. These effects were observed with acute (1 to 3 days) and repeated (up to 14 days) exposures. The most sensitive species is the rabbit. Hepatic microvesicular steatosis in the rabbit follows a different dose-response than body-weight decreases observed with aminocyclopyrachlor and aminocyclopyrachlor-methyl in rats, with a 100-fold lower adverse-effect level.

There are no chronic dietary toxicity studies available to assess the carcinogenic potential of CPCA. However, structural-activity relationship (SAR) analyses on CPCA and panadiplon indicated no structural alerts for genotoxicity or carcinogenicity. Also, there were no reports of tumorigenic responses to CPCA or panadiplon in the open scientific literature.

Specific information on the studies received and the nature of the adverse effects caused by aminocyclopyrachlor, aminocyclopyrachlor-methyl, and cyclopropane carboxylic acid, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Aminocyclopyrachlor: Human Health Risk Assessment for Section 3, Food Use on Rangeland/Pastures/CRP Acres* at pages 15–26 in docket ID number EPA–HQ–OPP–2011–0144.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

Summaries of the toxicological endpoints for aminocyclopyrachlor and cyclopropane carboxylic acid used for human health risk assessment are shown in Tables 1 and 2 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR AMINOCYCLOPYRACHLOR FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD and PAD for risk assessment	Study and toxicological effects
Acute dietary (All populations)	No hazard attributable to a single-exposure was identified.		
Chronic dietary (All populations)	NOAEL= 279 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 2.79 mg/kg/day. cPAD = 2.79 mg/kg/day	*Combined Chronic Toxicity/Carcinogenicity Rat Study.* LOAEL = 892 (males)/957 (females) mg/kg/day based on mild decreases in body weight/body weight gain.

TABLE 2—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CYCLOPROPANE CARBOXYLIC ACID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD and PAD for risk assessment	Study and toxicological effects
Acute dietary (All populations)	LOAEL= 2.55 mg/kg/day CPCA. UF_A = 10x UF_H = 10x FQPA SF (UF_{DB}, UF_L) = 10x	Acute RfD = 0.026 mg/kg/day. aPAD = 0.0026 mg/kg/day	*Panadiplon Subchronic Oral Rabbit Study* LOAEL = 10 mg/kg/day panadiplon (calculated to 2.55 mg/kg/day CPCA) based on hepatic steatosis.
Chronic dietary (All populations)	LOAEL= 2.55 mg/kg/day CPCA. UF_A = 10x UF_H = 10x FQPA SF (UF_{DB}, UF_L, UF_S) = 30x	Chronic RfD = 0.0087 mg/kg/day. cPAD = 0.00087 mg/kg/day	*Panadiplon Subchronic Oral Rabbit Study* LOAEL = 10 mg/kg/day panadiplon (calculated to 2.55 mg/kg/day CPCA) based on hepatic steatosis.

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to aminocyclopyrachlor, EPA considered exposure under the petitioned-for tolerances only, as there are no registered food/feed uses. CPCA is an environmental photodegradate of aminocyclopyrachlor present only in surface water; therefore, any dietary exposure would be from drinking water only and is not expected through food or feed. EPA assessed dietary exposures from aminocyclopyrachlor in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for aminocyclopyrachlor; therefore, a quantitative acute dietary exposure assessment was not conducted.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment for aminocyclopyrachlor, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that aminocyclopyrachlor and CPCA do not pose cancer risks to humans. Therefore, dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for aminocyclopyrachlor. Tolerance-level residues and 100 PCT were assumed for all petitioned-for food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for aminocyclopyrachlor and CPCA in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

The importation of milk and livestock commodities containing potential residues of aminocyclopyrachlor will not increase pesticide exposure in U.S. drinking water. Therefore, the drinking water estimates are based on pesticide exposure from the existing non-food/non-feed uses of aminocyclopyrachlor.

Based on the First Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model Ground Water (PRZM–GW) models, the estimated drinking water concentrations (EDWCs) of aminocyclopyrachlor for chronic exposures for non-cancer assessments are estimated to be 18.3 parts per billion (ppb) for surface water, and 78.0 ppb for ground water. The EDWCs of CPCA from surface water are estimated to be 1.7 ppb for acute exposure, and 1.2 ppb for chronic exposures for non-cancer assessments. Ground water EDWCs for CPCA were not calculated since CPCA is a photodegradate of aminocyclopyrachlor and is not anticipated to be present in ground water due to the absence of sunlight.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment to aminocyclopyrachlor, the water concentration value of 78.0 ppb was used to assess the contribution to drinking water. For acute dietary risk assessment to CPCA, the water concentration value of 1.7 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment to CPCA, the water concentration value of 1.2 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ‘‘residential exposure’’ is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Aminocyclopyrachlor is not currently registered for any specific use patterns that would result in residential exposure. In the risk assessment, EPA had assessed residential exposure based on previously-registered uses on lawn and turf, including golf courses; however, those residential use patterns are no longer registered, and therefore non-dietary residential exposure does not occur.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ‘‘available information’’ concerning the cumulative effects of a particular pesticide's residues and ‘‘other substances that have a common mechanism of toxicity.’’

EPA has not found aminocyclopyrachlor to share a common mechanism of toxicity with any other substances, and aminocyclopyrachlor does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that aminocyclopyrachlor does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* As discussed in Unit III.A., there was no evidence of prenatal toxicity resulting from exposure to aminocyclopyrachlor. There was no evidence of increased susceptibility following *in utero* exposure in the rat and rabbit developmental toxicity studies. An increase in abortions in maternal rabbits was observed at the limit dose, but the abortions were considered secondary effects due to severe maternal body weight loss. There was also no evidence of increased susceptibility of offspring in the rat reproduction and fertility studies, with only body weight decreases observed in both maternal rats and offspring at the limit dose.

For CPCA, there were no information available investigating developmental or offspring effects. However, there is indirect evidence in the open literature that the young may be more sensitive to the metabolic effects of CPCA, and this evidence does not allow this potential sensitivity to be ruled out. This evidence is provided by inherited conditions, specifically inborn errors of metabolism that results in compromised metabolism of fatty acids that is qualitatively similar to that of CPCA's effect of inhibition of beta oxidation of fatty acids. These inborn metabolism errors result in energy deficiencies during periods of fasting, and it is known that developing/young children are more sensitive to these effects than pregnant women or adults. The magnitude of this effect would be much more severe in the inherited case than for CPCA. This is because fatty acid oxidation is almost completely compromised in the inherited case and other cellular processes are also impacted, whereas only beta oxidation of fatty acids would be impacted for CPCA, and the magnitude of this impact is anticipated to be negligible for the estimated (low-level) dietary exposures.

3. *Conclusion.* For aminocyclopyrachlor, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X.

For the degradate cyclopropane carboxylic acid, the FQPA SF is retained at 10X for acute dietary exposures, to account for the extrapolation of data from a LOAEL to a NOAEL for hepatic steatosis/necrosis in rabbits, and to account for any potential uncertainties regarding developmental toxicity effects based on the available data. This SF is considered protective because hepatic steatosis/necrosis and any developmental toxicity effects would be caused by the same cellular mechanism. Therefore, protecting for these liver effects would protect any potential developmental toxicity resulting from very low dietary exposures to CPCA.

For chronic dietary exposures, the FQPA SF is increased from 10X to 30X to account for the use of a short-term (acute) study to assess long-term (chronic) exposure. The additional 3X SF is considered protective since the duration of the acute study was 14 days with the dose administered as a bolus (via gavage). Because the exposure in this study was repeated and a bolus dose was used that would overestimate dietary exposure, the severity of the liver effects are not expected to vary substantially with time.

Those decisions are based on the following findings:

i. The toxicity database for aminocyclopyrachlor is adequate for assessing the sensitivity of infants and children under FQPA and for selecting endpoints for risk assessment.

The database for CPCA is also adequate, as there is a substantial amount of toxicological information available in the open literature that identifies the target organ of toxicity, the mechanism of toxicity, and the most sensitive species. The FQPA SFs account for any residual uncertainties in the toxicity database for CPCA.

ii. There is no indication that aminocyclopyrachlor is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Based on the mechanism of toxicity for CPCA that has been identified in the open scientific literature, the nervous system is not expected to be more sensitive than the liver. Although there are no studies available that directly investigate the effects of CPCA on the nervous system, there is indirect evidence that the endpoint on which the Agency is regulating CPCA (hepatic steatosis/necrosis) is protective of the nervous system. First, the molecular mechanism underlying hepatic steatosis has been identified as inhibition of the metabolic pathway of beta oxidation of fatty acids in the mitochondria. This is a major, energy producing pathway in liver but not in the brain. Since the ketone bodies generated by this process in the liver are metabolized by the brain for energy, any brain effects from inhibition of this pathway would be secondary to liver effects. Second, CPCA is a metabolite of panadiplon, a drug that was developed to target the nervous system as an anxiolytic. Panadiplon failed in preclinical development not as a result of neurotoxicity, but as a result of liver toxicity that was caused by CPCA. This further supports that adverse effects on the liver is more sensitive than the brain. Since the endpoint chosen for risk assessment is protective for liver effects, it is therefore also protective for any primary or secondary neurotoxicity that may result from CPCA exposure.

iii. There is no evidence that aminocyclopyrachlor results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. In the rabbit prenatal developmental study, an increase in abortions was observed at the limit dose, which were considered secondary effects to severe decreases in maternal body weight.

As discussed in Unit III.D.2., there is no information available that directly investigates the developmental effects of CPCA. However, based on the known information, the magnitude of the potential impact of CPCA exposure on the inhibition of beta oxidation of fatty acids is anticipated to be negligible for the estimated dietary exposure, and less than the non-CPCA-related effects resulting from inborn metabolic errors which compromises the metabolism of fatty acids and other cellular processes.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to aminocyclopyrachlor and CPCA in drinking water. These assessments will not underestimate the exposure and risks posed by aminocyclopyrachlor and CPCA.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. For aminocyclopyrachlor, no adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, aminocyclopyrachlor is not expected to pose an acute risk.

For CPCA, using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from drinking water only will occupy 11% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure will utilize <1% of the cPAD for aminocyclopyrachlor (from food and water) and 7.4% of the cPAD for CPCA (from water only) for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3. regarding residential use patterns, chronic residential exposure to residues of aminocyclopyrachlor and CPCA is not expected.

3. *Short- and Intermediate-term risks.* Short- and intermediate-term aggregate exposures take into account short- and intermediate-term residential exposures plus chronic exposure to food and water (considered to be a background exposure level).

Short- and intermediate-term adverse effects were identified; however, aminocyclopyrachlor is no longer registered for any use patterns that would result in residential exposure. Short- and intermediate-term risks are assessed based on short-term/intermediate-term residential exposure plus chronic dietary exposure. Because there is no residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-/intermediate-term risk), no further assessment of short- and intermediate-term risks are necessary, and EPA relies on the chronic dietary risk assessments for evaluating short- and intermediate-term risks for aminocyclopyrachlor and CPCA.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, aminocyclopyrachlor is not expected to pose a cancer risk to humans. As discussed in Unit III.A., CPCA is also not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to aminocyclopyrachlor and CPCA residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology ([DuPont–27162, Revision No. 1; high-performance liquid chromatography with tandem mass spectrometry detection (HPLC/MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). Codex is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for aminocyclopyrachlor.

C. Revisions to Petitioned-For Tolerances

Based on the available residue chemistry data and EPA policy on livestock tolerances, the proposed tolerances for liver (0.06 ppm) and meat byproducts except liver (0.40 ppm) of cattle, goat, horse, and sheep are replaced by establishing tolerances for meat byproducts of cattle, goat, horse, and sheep at 0.30 ppm. Also, based on the residue data, EPA is lowering the proposed tolerances for fat of cattle, horse, goat, and sheep from 0.07 ppm to 0.05 ppm. Lastly, EPA is also lowering the proposed tolerances for milk from 0.035 ppm to 0.01 ppm, and meat of cattle, goat, horse, and sheep from 0.02 ppm to 0.01 ppm to harmonize with established Canadian MRLs.

V. Conclusion

Therefore, tolerances are established for residues of the herbicide aminocyclopyrachlor, 6-amino-5-chloro-2-cyclopropyl-4-pyrimidinecarboxylic acid, including its metabolites and degradates, in or on cattle, fat at 0.05 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 0.30 ppm; goat, fat at 0.05 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.30 ppm; horse, fat at 0.05 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.30 ppm; milk at 0.01 ppm; sheep, fat at 0.05 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproducts at 0.30 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply. This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2016.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.689 to subpart C to read as follows:

§ 180.689 Aminocyclopyrachlor; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide aminocyclopyrachlor, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of aminocyclopyrachlor, 6-amino-5-chloro-2-cyclopropyl-4-pyrimidinecarboxylic acid, and aminocyclopyrachlor methyl ester, methyl 6-amino-5-chloro-2-cyclopropyl-4-pyrimidinecarboxylate, calculated as the stoichiometric equivalent of aminocyclopyrachlor.

Commodity	Parts per million
Cattle, fat [1]	0.05
Cattle, meat [1]	0.01
Cattle, meat byproducts [1]	0.30
Goat, fat [1]	0.05
Goat, meat [1]	0.01

Commodity	Parts per million
Goat, meat byproducts [1] ...	0.30
Horse, fat [1]	0.05
Horse, meat [1]	0.01
Horse, meat byproducts [1]	0.30
Milk [1]	0.01
Sheep, fat [1]	0.05
Sheep, meat [1]	0.01
Sheep, meat byproducts [1]	0.30

[1] There are no U.S. registrations as of August 11, 2016.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2016–19117 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0919; FRL–9946–30]

Halauxifen-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of halauxifen-methyl and its metabolite, XDE–729 acid, in or on multiple commodities which are identified and discussed later in this document. Dow AgroSciences LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 11, 2016. Objections and requests for hearings must be received on or before October 11, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0919, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0919 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 11, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0919, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 15, 2013 (78 FR 11126) (FRL–9378–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8086) by Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide, halauxifen-methyl (methyl 4-amino-3-chloro-6-(4-chloro-2-fluoro-3-methoxyphenyl)pyridine-2-carboxylate) and its major metabolite, XDE–729 acid, expressed as halauxifen-methyl (parent) equivalents, in or on barley, grain at 0.01 parts per million (ppm); barley, hay at 0.01 ppm; barley, straw at 0.01 ppm; cattle, fat at 0.01 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 0.01 ppm; goat, fat at 0.01 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.01 ppm; horse, fat at 0.01 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.01 ppm; milk at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, meat at 0.01 ppm; sheep, meat byproducts at 0.01 ppm; wheat, forage at 0.5 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.04 ppm; and wheat, straw at 0.015 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that livestock commodity tolerances are not required for the proposed uses. In addition, the proposed "wheat, hay" tolerance level of 0.04 ppm will be set at a reduced tolerance level of 0.03 ppm. The reason for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for halauxifen-methyl and its acid metabolite, including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with halauxifen-methyl and its major metabolite, XDE–729 acid, follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicology database for halauxifen-methyl is considered adequate at this time. Following oral exposure and absorption, the liver is exposed pre-systemically to halauxifen-methyl, where it is hydrolyzed to its major metabolite, XDE–729 acid, before entering the systemic circulation. Therefore, systemic exposure to organs and tissues other than the liver is to XDE–729 acid, whereas the liver is also exposed to the parent prior to its metabolism. The guideline studies were conducted on XDE–729 acid and identified the kidney as the main target organ. Bridging studies on halauxifen-methyl identified the liver as the target organ, but the data could not bridge to the acid metabolite because liver toxicity from exposure to halauxifen-methyl occurred at lower doses than the kidney toxicity resulting from exposure to XDE–729 acid. In *lieu* of conducting long-term oral studies on halauxifen-methyl, mechanistic studies were performed to characterize the mode of action (MOA) for liver toxicity. These studies identified activation of the liver aryl hydrocarbon receptor (AhR) as the MOA, and the molecular initiating event (MIE), for liver toxicity, for which increased liver Cyp1a1 gene expression serves as a biomarker. In the absence of this MIE, liver toxicity from parent halauxifen-methyl, including induction of hepatocellular proliferation, will not be observed. A point of departure (POD) of 3 mg/kg/day for increased Cyp1a1 expression (observed at 10 mg/kg/day, the study NOAEL) was identified in the rat 90-day dietary study on halauxifen-methyl and was selected for chronic dietary risk assessment, since it protects for the initial step in liver toxicity, regardless of exposure duration. Therefore, the bridging and mechanistic studies were considered along with the guideline studies in selection of the dose and endpoint for halauxifen-methyl. Based on the abundance of guideline and mechanistic data available, a MOA approach was used for the identification and characterization of hazard. Due to the distinct toxicities of the two compounds and the unique MOA for liver toxicity of halauxifen-methyl, risk from the two compounds was assessed separately.

There is no evidence of neurotoxicity or immunotoxicity for either compound. Inhalation studies (including the acute LD_{50} study) were waived because MOEs for inhalation exposure, calculated using a highly conservative endpoint from oral data, were high (≥2,500), and the available oral and dermal studies did not indicate the potential for portal of entry effects. In addition, halauxifen-methyl has a low vapor pressure and adequate particle sizes for test atmospheres could not be generated. Guideline rat or rabbit dermal toxicity, rat two-generation reproductive toxicity, dog chronic toxicity, rat chronic toxicity/carcinogenicity, mouse carcinogenicity, rat acute and subchronic neurotoxicity studies on halauxifen-methyl were also waived. The waivers were granted because adequate data were available for XDE–729 acid, to which systemic exposure would occur. The available data, when combined with the bridging and MOE data on halauxifen-methyl, allowed identification of a protective POD for AhR-mediated liver toxicity. Therefore, an additional database uncertainty factor (UF_{DB}) is not required for either compound. Both are mild eye irritants (Category III) but not dermal irritants or sensitizers. XDE–729 acid is classified as "not likely to be carcinogenic to humans." Halauxifen-methyl is classified as "not likely to be carcinogenic to humans at doses that do not induce Cyp1a1 expression," based on the premise that AhR activation and subsequent promotion of hepatocellular tumors (via a prolonged increase in hepatocellular proliferation), a well-known non-genotoxic mechanism of liver carcinogenesis that has been previously described for other chemicals, depend upon this molecular initiating event (MIE). Moreover, based on its rapid metabolism to XDE–729 acid, halauxifen-methyl is not expected to persist in the body; therefore, progression of liver toxicity (including carcinogenic potential) from sustained AhR activation is not expected. Neither compound showed evidence of genotoxicity.

There is no evidence of increased prenatal susceptibility to either compound in developmental toxicity studies in two species. No developmental toxicity was observed in the presence of maternal toxicity for rats exposed to halauxifen-methyl or rabbits exposed to XDE–729 acid. In rats exposed to XDE–729 acid, mild fetal effects (decreased body weight and delayed ossification of the thoracic centra) were observed in the presence of more significant maternal toxicity (moribund sacrifice due to excessively decreased body weight and food consumption, along with increased relative kidney weight). In rabbits exposed to halauxifen-methyl, the fetal effects (decreased body weight, increases in delayed ossification of the pubis) were observed in the presence of maternal liver histopathology and increased liver weight, at a dose greater than the maternal LOAEL, and were therefore not considered indicative of greater sensitivity. In a rat two-generation reproductive toxicity study on XDE–729 acid, there was no evidence of increased postnatal susceptibility. Parental toxicity in the rat two-generation reproductive toxicity study was observed at 443 mg/kg/day (NOAEL 103 mg/kg/day), but no offspring or reproductive toxicity was reported. A reproductive toxicity study was not conducted on halauxifen-methyl. Residual concerns for postnatal susceptibility to halauxifen-methyl in the absence of this study are low, due to selection of a highly conservative endpoint and assumptions for dietary exposure, as well as the low level of exposure expected from proposed use patterns.

Specific information on the studies received and the nature of the adverse effects caused by halauxifen-methyl and its metabolite, XDE–729 acid, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Halauxifen-methyl—New Active Ingredient Human Health Risk Assessment for Proposed Uses on Cereal Grains (Barley, Wheat, and Triticale) at page 42 in docket ID number EPA–HQ–OPP–2012–0919.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for halauxifen-methyl used in the Agency's human health risk assessment is shown in Table 1(a) of this unit. No hazard from a single exposure was identified in the available database; therefore, no risk is expected from acute dietary exposure to halauxifen-methyl. For chronic dietary exposure, the rat 90-day oral study was selected. Although long-term oral toxicity studies are not available for halauxifen-methyl, a dose and an endpoint protective of long-term toxicity could be identified using the subchronic data together with the MOA data. The rat 90-day study NOAEL of 10.3 mg/kg/day was based on increased liver weight, hypertrophy and vacuolization consistent with fatty change at the LOAEL of 53.4 mg/kg/day. Liver effects at the LOAEL were of low severity but were considered treatment-related. A marked increase (1,500-fold above controls) in Cyp1a1 expression was also observed at the LOAEL. As previously noted, mechanistic studies on halauxifen-methyl identified activation of liver AhR as the MOA for liver toxicity, for which increased expression of Cyp1a1 in the liver is a biomarker for AhR activation, the MIE. In the absence of AhR activation, liver toxicity will not occur. Although there were no liver effects observed at the study NOAEL, a 52-fold increase in Cyp1a1 expression was observed. This increase is well below the increase that was associated which mild liver toxicity. Long-term effects on the liver from this lower level increase are not known in the absence of chronic data, but the lowest dose in the study, 3 mg/kg/day, showed essentially no Cyp1a1 activation. Cyp1a1 expression at 3 mg/kg/day was comparable to controls in both the 28- and 90-day studies (1.2- and 3.6-fold higher than controls, respectively), indicating that there is not expected to be significant activation of the AhR receptor at this dose level over time. Therefore, in order to be protective of potential adverse effects on the liver following long-term exposure, the point of departure (POD) of 3 mg/kg/day was selected, based on increased expression of liver Cyp1a1 (52-fold) at 10 mg/kg/day. The selected dose and endpoint are considered conservative, since the dose is below the study NOAEL, but protective of residual uncertainty due to the lack of chronic data because liver toxicity may not occur in the absence of the MIE, regardless of exposure duration. They are also protective of chronic effects from XDE–729 acid, which are observed at higher doses. A UF of 100 is based on the combined interspecies (10x) and intraspecies (10x) UFs. An additional 10x UF for lack of chronic data was not applied for the following reasons: (1) Progression of toxicity was not observed in the 28- and 90-day dietary studies in the rat: the NOAELs and LOAELs for both studies were the same, and the severity of the findings was minimal at both exposure durations; (2) evaluation of Cyp1a1 expression in the rat 28- and 90-day studies indicated that at the selected POD of 3 mg/kg/day, which is below the NOAELs for these studies, there is no expectation of significant AhR activation that could lead to liver toxicity. Observable liver toxicity in these studies was only associated with significantly greater levels of Cyp1a1; (3) halauxifen-methyl is rapidly metabolized to the acid, and neither bioaccumulate; and (4) based on comparative *in vitro* studies, humans are not anticipated to be more sensitive to liver effects of halauxifen-methyl than rats.

Carcinogenicity studies on halauxifen-methyl were not conducted. Systemic exposure from halauxifen-methyl is primarily to XDE–729 acid, which showed no evidence of carcinogenicity. However, pre-systemic exposure of the liver to halauxifen-methyl was shown to activate the AhR receptor, an effect that induces an increase in hepatocellular proliferation and, subsequently, may promote an increased incidence of liver tumors with long-term exposure. The molecular marker for AhR activation, the MIE for liver toxicity, is increased expression of hepatic Cyp1a1, which was observed at a dose below the LOAEL for observable adverse effects of any type. The chronic dietary endpoint for halauxifen-methyl is based on the point of departure (POD) from the rat subchronic study for Cyp1a1 induction, as described above. The selected POD is considered very conservative because it is below the study NOAEL (the LOAEL was based on mild liver effects). Since Cyp1a1 induction is one of the early key events in the MOA leading to hepatotoxicity and promotion of hepatocellular proliferation, a dose that is protective of this event will be protective of the potential risk for liver cancer with chronic exposure, based on the rapid onset of AhR activation following initiation of exposure, and the lack of evidence of temporal progression of liver toxicity in the available studies (28- and 90-day). The MOA is considered relevant to human health risk assessment, but *in vitro* data suggest that humans are unlikely to be more sensitive than the rat. Based on a weight-of-the-evidence consideration, halauxifen-methyl is classified as "not likely to be carcinogenic to humans" at doses that do not induce liver Cyp1a1 expression.

TABLE 1(a)—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR HALAUXIFEN-METHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children and females age 13–49).	No hazard from a single exposure was identified in the available database; therefore, no risk is expected from this exposure scenario.		
Chronic dietary (All populations)	POD = 3.0 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.03 mg/kg/day. cPAD = 0.03 mg/kg/day	90-day oral toxicity in the rat (halauxifen-methyl). NOAEL = 10 mg/kg/day. At the NOAEL, increased Cyp1a1 expression was observed (endpoint selected for risk assessment). The lowest dose of 3.0 mg/kg/day was selected to be protective of potential long-term effects from increased AhR expression in the liver.[1] LOAEL = 52 mg/kg/day based on mild liver enlargement and pathology.
Cancer (Oral, dermal, inhalation).	Classification: Not likely to be carcinogenic to humans at dose levels that do not induce Cyp1a1 expression. The cRfD is considered protective of potential cancer effects because it protects for the MIE for hepatocellular proliferation (AhR activation) that, over time, may result in promotion of liver tumors.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MIE = molecular initiating event.

[1] The POD selected for risk assessment was based on a non-adverse finding, increased liver Cyp1a1 expression in a rat 90-day dietary study, which was observed below the study NOAEL of 10 mg/kg/day for liver toxicity. This effect is a biomarker for activation of AhR, which causes liver toxicity and hepatocellular proliferation. The POD was selected to be protective of potential liver effects resulting from chronic dietary exposure to halauxifen-methyl. Other tissues and organs will not be exposed to halauxifen-methyl due to rapid conversion to XDE–729 acid. The POD is protective of effects from exposure to XDE–729 acid.

A summary of the toxicological endpoints for XDE–729 acid used for human risk assessment is shown in Table 1(b) of this unit. No hazard from a single exposure was identified in the available database; therefore, no risk is expected from acute dietary exposure to XDE–729 acid. The chronic toxicity/carcinogenicity study using the rat was chosen to assess chronic dietary risk to XDE–729 acid. A NOAEL of 20.3 was chosen based on hyperplasia of the renal pelvic epithelium in females observed at 101 mg/kg/day. This NOAEL is protective of developmental effects, observed in the rat at 526 mg/kg/day (NOAEL = 140 mg/kg/day), and of maternal toxicity in both the rat (LOAEL = 526 mg/kg/day) and rabbit (LOAEL 1094 mg/kg/day).

There was no evidence of carcinogenicity in rat and mouse cancer studies on XDE–729 acid, which is classified as "not likely to be carcinogenic to humans."

TABLE 1(b)—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR XDE–729 ACID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children and females age 13–49).	No hazard from a single exposure was identified in the available database; therefore, no risk is expected from this exposure scenario.		
Chronic dietary (All populations)	NOAEL = 20.3 mg/kg/day (females). UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.20 mg/kg/day. cPAD = 0.20 mg/kg/day.	Rat two-year dietary chronic toxicity/carcinogenicity study NOAEL = 101/20.3 mg/kg/day [M/F]. LOAEL = 404/101 mg/kg/day [M/F] based on increased mortality, altered urinalysis parameters, decreased body weight, increased kidney weights, adrenal zone glomerulosa hypertrophy, increased degeneration and regeneration of renal tubules and kidney stones, and bladder pathology in males; in females, hyperplasia of pelvic epithelium of the kidney.

TABLE 1(b)—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR XDE–729 ACID FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (Oral, dermal, inhalation).	Classification: Not likely to be carcinogenic to humans.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to halauxifen-methyl and the XDE–729 acid metabolite, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures to these compounds in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for halauxifen-methyl or XDE–729 acid; therefore, quantitative acute dietary exposure assessments were determined unnecessary.

ii. *Chronic exposure.* In conducting individual chronic dietary exposure assessments for these two compounds, EPA used the food consumption data collected between 2003 and 2008 for USDA's National Health and Nutrition Survey/What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used tolerance-level residues and assumed 100 percent of all wheat, barley and triticale acres are treated. No processing factors were used due to the lack of residue concentration in processed commodities. Residue chemistry data indicate that halauxifen-methyl (parent compound) converts to the XDE–729 acid metabolite so quickly in the environment that dietary exposure to halauxifen-methyl is expected to be minimal.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that halauxifen-methyl does not pose a cancer risk to humans at dose levels that do not induce liver toxicity or Cypla1 expression. EPA has also concluded that its XDE–729 acid metabolite does not pose a cancer risk to humans. Therefore, separate dietary exposure assessments for the purpose of assessing cancer risk are determined to be unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for halauxifen-methyl. Tolerance-level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for halauxifen-methyl and its metabolites (primarily XDE–729 acid) in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of halauxifen-methyl and its metabolites. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of halauxifen-methyl were estimated for chronic exposure in a non-cancer assessment. Based on the Screening Concentration in Groundwater (SCI–GROW) model, the EDWCs of the XDE–729 acid metabolite were estimated for chronic exposure in a non-cancer assessment. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment of halauxifen-methyl only, the water concentration value of 0.007 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment of XDE–729 acid, a drinking water concentration value of 19.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Halauxifen-methyl is not used, nor is it being proposed for use in any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has not found halauxifen-methyl or XDE–729 acid to share a common mechanism of toxicity with any other substances, nor do they appear to produce any toxic metabolites produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that neither of these compounds have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased prenatal susceptibility to either compound and no evidence of postnatal susceptibility to XDE–729 acid. Residual concerns for postnatal susceptibility to halauxifen-methyl in the absence of reproductive toxicity data are low, due to selection of a conservative endpoint and assumptions for dietary exposure, as well as the low level of exposure expected from proposed use patterns.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for halauxifen-methyl and XDE–729 acid are complete.

ii. There is no indication that halauxifen-methyl or XDE–729 acid are neurotoxic chemicals and there is no need for developmental neurotoxicity studies or additional UFs to account for neurotoxicity.

iii. There is no evidence to suggest that exposure to halauxifen-methyl or XDE–729 acid results in increased *in utero* susceptibility in rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment was based on 100 PCT and tolerance-level residues. EPA also made conservative assumptions in the ground and surface water modeling used to assess exposure to halauxifen-methyl and XDE–729 acid in drinking water. These assessments will not underestimate the exposure and risks posed by these compounds.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, neither halauxifen-methyl, nor XDE–729 acid are expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to halauxifen-methyl from food and water will utilize < 1% of the cPAD for all infants, the population group receiving the greatest exposure. In addition, EPA has concluded that chronic exposure to XDE–729 acid from drinking water will also utilize < 1% of the cPAD for all infants. XDE–729 is not a residue of concern in food; therefore, the chronic assessment was based on drinking water only for this acid metabolite. There are no residential uses for halauxifen-methyl being proposed at this time; therefore chronic aggregate risk reflects only dietary exposure to potential residues in food and drinking water.

3. *Short-term risk.* Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary.

4. *Intermediate-term risk.* Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD, no further assessment of intermediate-term risk is necessary.

5. *Aggregate cancer risk for U.S. population.* Long-term dietary studies conducted with XDE–729 acid in the rat and the mouse showed no evidence of carcinogenicity. Based on the MOA and bridging data on halauxifen-methyl, which allowed identification of a POD for liver cancer, halauxifen-methyl is not expected to pose a cancer risk to humans at dose levels below those that induce liver Cyp1a1 expression. Genotoxicity studies were negative for both compounds.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to halauxifen-methyl and XDE–729 acid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (LC–MS/MS) with a limit of quantitation of 0.01 ppm is available to enforce the tolerance expression. The multi-residue method, QuEChERS, is adequate for the determination of both residues of halauxifen-methyl and XDE–729 acid in crop commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

No MRLs have been established by Codex for halauxifen-methyl on the commodities affected by this action.

C. Revisions to Petitioned-For Tolerances

As noted in Unit II, the petitioned-for livestock commodity tolerances (milk; fat, meat, meat byproducts of cattle, goat, horse, and sheep) are not being established due to the lack of quantifiable residues in livestock commodities associated with the proposed uses in wheat, barley and triticale. In addition, although the petitioner proposed a tolerance of 0.04 ppm for wheat, hay, EPA has determined that a tolerance of 0.03 ppm is appropriate. When the petitioner determined the proposed tolerances, the metabolite XDE–729 acid was included as a residue of concern. EPA has subsequently determined that this metabolite is not a residue of concern for tolerance enforcement. Residues of metabolite XDE–729 acid were not quantifiable in any of the residue field trials. Therefore, the values for measuring compliance with these tolerances only include residues of halauxifen-methyl. With the exception of wheat, hay, this revision to the residues of concern for tolerance enforcement had no impact on the plant commodity tolerances.

V. Conclusion

Therefore, tolerances are established for residues of halauxifen-methyl, (methyl 4-amino-3-chloro-6-(4-chloro-2-fluoro-3-methoxyphenyl) pyridine-2-carboxylate) and its major metabolite, XDE–729 acid, expressed as halauxifen-methyl (parent) equivalents, in or on barley, (grain, hay, straw) and wheat, grain at 0.01 ppm; wheat, forage at 0.50 ppm; wheat, hay at 0.03 ppm; and wheat, straw at 0.015 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2016.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.691 to subpart C to read as follows:

§ 180.691 Halauxifen-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, halauxifen-methyl, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only halauxifen-methyl (methyl (4-amino-3-chloro-6-(4-chloro-2-fluoro-3-methoxyphenyl)-2-pyridine carboxylate).

Commodity	Parts per million
Barley, grain	0.01
Barley, hay	0.01
Barley, straw	0.01
Wheat, forage	0.50
Wheat, grain	0.01
Wheat, hay	0.03
Wheat, straw	0.015

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2016–19118 Filed 8–10–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2016–0176; FRL–9950–13–Region 6]

Arkansas: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Arkansas has applied to the United States Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this direct final rule. In the "Proposed Rules" section of this **Federal Register**, EPA is also publishing a separate document that serves as the proposal to authorize these changes. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments which oppose this authorization during the comment period, the decision to authorize Arkansas' changes to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a

document in the **Federal Register** withdrawing this direct final rule before it takes effect, and the separate document in the "Proposed Rules" section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: This final authorization is effective on October 11, 2016 unless the EPA receives adverse written comment by September 12, 2016. If the EPA receives such comment, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: patterson.alima@epa.gov.*
- *Fax:* (214) 665–6762 (prior to faxing, please notify Alima Patterson at (214) 665–8533).
- *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, RCRA Permit Section (RPM), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202–2733.
- *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, RCRA Permit Section (RPM), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202–2733.

Instructions: EPA must receive your comments by September 12, 2016. Direct your comments to Docket ID Number EPA–R06–RCRA–2016–0176. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov,* or email. The Federal *regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*)

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov,* or in hard copy.

You can view and copy Arkansas' application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Arkansas Department of Environmental Quality (ADEQ), 8101 Interstate 30, Little Rock, Arkansas 72219–8913, (501) 682–0876, and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, RCRA Permit Section (RPM), Multimedia Planning and Permitting Division, (214) 665–8533, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, and email address *patterson.alima@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 CFR parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in unauthorized States. Thus, the EPA will implement those requirements and prohibitions in the State of Arkansas, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

II. What decisions has the EPA made in this rule?

On November 30, 2015, Arkansas submitted a final complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between October 4, 2005 and January 3, 2014, including the adoption of portions of RCRA Clusters XVI and XVII, and RCRA Clusters XXII and XXIII (Checklists 211, 213, 214, and 228 through 232). The EPA concludes that Arkansas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants Arkansas final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this document. The State of Arkansas has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above. New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Arkansas, including issuing permits, until the State is granted authorization to do so.

III. What is the effect of this authorization decision?

The effect of this decision is that a facility in Arkansas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Arkansas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which Arkansas is being authorized by this action are already effective under State law, and are not changed by this action.

IV. Why is EPA using a direct final rule?

Along with this direct final rule, the EPA is publishing a separate document in the "Proposed Rules" section of this **Federal Register** that serves as the proposal to authorize these State program changes. The EPA did not publish a proposal before this rule because EPA views this as a routine program change and do not expect comments. The EPA also views the Arkansas program revisions as noncontroversial action and anticipates no adverse comment.

EPA is providing an opportunity for public comment now, as described in Section E of this document.

V. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program, EPA will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

VI. For what has Arkansas previously been authorized?

Arkansas initially received final authorization on January 25, 1985, (50 FR 1513) to implement its Base Hazardous Waste Management program. Arkansas received authorization for revisions to its program on January 11, 1985 (50 FR 1513), effective January 25, 1985; March 27, 1990 (55 FR 11192), effective May 29, 1990; September 18, 1991 (56 FR 47153), effective November 18, 1991; October 5, 1992 (57 FR 45721), effective December 4, 1992; October 7, 1994 (59 FR 51115), effective December 21, 1994; April 24, 2002 (67 FR 20038), effective June 24, 2002; and August 15, 2007 (72 FR 45663), effective October 15, 2007. The authorized Arkansas RCRA program was incorporated by reference into the Code of Federal Regulations effective December 13, 1993 (58 FR 52674); June 28, 2010 (75 FR 36538), effective August 27, 2010; August 10, 2012 (77 FR 47779), effective October 9, 2012; and October 31, 2014 (79 FR 64678), effective December 30, 2014. The authorized Arkansas RCRA program was incorporated by reference into the Code of Federal Regulations October 12, 1993 (58 FR 52674) effective December 13, 1993; June 20, 1995 (60 FR 32112) effective August 21, 1995; June 28, 2010 (75 FR 36538) effective August 27, 2010; October 2, 2014 (79 FR 59438) effective December 1, 2014; January 29, 2016 (81 FR 4961) effective March 29, 2016. On November 30, 2015, Arkansas submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

The ADEQ has re-organized its agency and division's program areas and subunits, but all duties and responsibilities remain the same. Any differences between the State's provisions and the Federal provisions are noted on the individual revision Checklists. The official State regulations may be found in Arkansas Pollution Control and Ecology Commission Regulation Number 23 (Hazardous Waste Management), last amended September 25, 2015, effective October 18, 2015.

The provisions for which the State is seeking authorization are documented in the Rule Revision Checklists 211, 213, 214, and 228 through 232, which are portions of RCRA Clusters XVI and XVII, and RCRA Clusters XXII and XXIII. Reference to Arkansas Code Annotate (A.C.A) of 1987, Annotated, as amended August 2015. Reference to Arkansas Pollution Control and Ecology Commission (APC&EC) Regulations Number 23, (Hazardous Waste Management) (formerly titled the Arkansas Hazardous Waste Management Code), last amended September 25, 2015, to adopt all final rules promulgated by the EPA through June 26 2014, which became, effective on October 18, 2015. Dates of enactment and adoption for other statutes or regulations are given when cited.

VII. What changes is the EPA authorizing with this action?

On November 30, 2015, the State of Arkansas submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a direct final decision, subject to receipt of written comments that oppose this action, that the State of Arkansas' hazardous waste program revision is equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfies all of the requirements necessary to qualify for final authorization. Therefore, the EPA grants the State of Arkansas final authorization for portions of RCRA Clusters XVI and XVII, and RCRA Clusters XXII and XXIII (Checklists 211, 213, 214, and 228 through 232). The State of Arkansas program revisions consist of regulations which specifically govern Federal Hazardous Waste revisions promulgated October 4, 2005, April 4, 2006, July 14, 2006, April 13, 2012, and July 2013 through June 2014, which are listed in a chart below.

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
1. Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks exemptions”). (Checklist 211).	70 FR 57769–57785 October 4, 2005	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.3(a)(2)(iv)(A), (B), (D), (F), and (G), as amended September 25, 2015, effective on October 18, 2015.
2. Burden Reduction Initiative. (Checklist 213).	71 FR 16862–16915 April 4, 2006	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.31(b)(2)–(b)(7), 261.4(a)(9)(iii)(E), 261.4(f)(9), 264.15(b)(4), 264.16(a)(4), 264.52(b), 264.56(i), 264.73(b) introductory paragraph, (b)(1), (b)(2), (b)(6), (b)(8), (b)(10), (b)(18), and (19), 264.98(d), 264.98(g)(2) and (g)(3), 264.99(f) and (g), 264.100(g), 264.113(e)(5), 264.115[1], 264.120[1], 264.143(i)[1], 264.145(i)[1], 264.147(e)[1], 264.174, 264.191(a)[1], 264.191(b)(5)(ii)[1], 264.192(a) introductory paragraph[1] and (b) introductory paragraph[1], 264.193(a)(1) and (a)(2), 264.193(i)(2)[1], 264.195(b)–(g), 264.196(f)[1], 264.251(c) introductory paragraph, 264.280(b)[1], 264.314, 264.343(a)(2), 264.347(d), 264.554(c)(2)[1], 264.571(a)–(c)[1], 264.573(a)(4)(ii)[1], 264.573(g)[1], 264.574(a)[1], 264.1061(b)(1) and (b)(2), 264.1062(a), 264.1100 introductory paragraph, 264.1101(c)(2)[1], 265.15(b)(4), 265.16(a)(4), 265.52(b), 265.56(i), 265.73(b) introductory paragraph, 265.73(b)(1) and (b)(2), 265.73(b)(6)–(8), 265.73(b)(15), 265.90(d)(1) and (d)(3), 265.93(d)(2) and (d)(5), 265.113(e)(5), 265.115[1], 265.120[1], 265.143(h)[1], 265.145(h)[1], 265.147(e)[1], 265.174, 265.191(a)[1], 265.191(b)(5)(ii)[1], 265.192(a) introductory paragraph[1] and (b) introductory paragraph[1], 265.193(a)(1)–(2), 265.193(i)(2)[1], 265.195(a)–(c), 265.195(e)–(g), 265.196(f)[1], 265.201(c) introductory paragraph, 265.201(d), 265.201(f)–(h), 265.221(a), 265.224, 265.259(a), 265.280(e)[1], 265.301(a), 265.303(a), 265.314, 265.441(a)–(c)[1], 265.443(a)(4)(ii)[1], 265.443(g)[1], 265.444(a)[1], 265.1061(b)(1) and (b)(2), 265.1061(d), 265.1062(a), 265.1100 introductory paragraph, 265.1101(c)(2)[1], 266.102(e)(10), 266.103(d) and (k), 268.7(a)(1) and (a)(2), 268.7(b)(6), 268.9(a) and (d), 270.14(a)[1], 270.16(a)[1], 270.26(c)(15)[1], and 270.42 Appendix I, Item O except Item O.1, as amended September 25, 2015, effective on October 18, 2015.
3. Correction to Errors in the Code of Federal Regulations. (Checklist 214).	71 FR 40254–40280 July 14, 2006	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.10 “Incompatible Waste”, “Personnel or facility personnel”, “Universal waste”, and “Used oil”, 260.22(a)(1), 260.22(d)(1)(ii), 260.40(a), 260.41 introductory paragraph, 261.2(c)(1)(i), 261.3(a)(2)(i), 261.4(a)(20)(v), 261.4(b)(6)(i)(B), 261.4(b)(6)(ii) introductory paragraph, 261.4(b)(6)(ii)(D) and (F), 261.4(b)(9), 261.4(e)(2)(vi), 261.4(e)(3)(i), 261.6(a)(2)(i)–(v), 261.6(c)(2), 261.21(a)(3) and (a)(4), 261.21/Notes 1–4, 261.24(b), 261.31(a)/Table, 261.32/Table “K107” and “K069” entries, 261.33(e), 261.33(e)/Comment, 261.33(e)/Table, 261.33(f), 261.33(f)/Comment, 261.33(f)/Table, 261.38/Table 1, 261.38(c)(1)(i)(C)*(4)*, Part 261, Appendix VII, Part 261, Appendix VIII, 262.34(a)(1)(iv), 262.53(b), 262.56(b), 262.58(a)(1), 262.70, 262.81(k), 262.82(a)(1)(ii), 262.83(b)(1)(i), 262.83(b)(2)(i), 262.84(e), 262.87(a), 262.87(a)(5) introductory paragraph, 264.1(g)(2), 264.4, 264.13(b)(7)(iii)(B), 264.17(b) introductory paragraph, 264.18(a)(2)(iii), 264.18(b)(2)(iii), 264.97(a)(1) introductory paragraph, 264.97(a)(1)(i), 264.97(i)(5), 264.98(a)(2), 264.98(g)(4)(i), 264.99(h)(2) introductory text, 264.101(d), 264.111(c), 264.112(b)(8), 264.115, 264.116, 264.118(c), 264.119(b)(1)(ii), 264.140(d)(1), 264.142(b)(2), 264.143(b)(7) and (b)(8), 264.143(e)(5), 264.145(a)(3)(i), 264.145(d)(6), 264.145(f)(11) introductory paragraph, 264.147(h)(1), 264.151(b), 264.151(f) introductory paragraph, 264.151(g), Letter From Chief Financial Officer, fifth paragraph, item 3, Part A, Alternative I, item *3, Part B, Alternative I, items 10 and 15, and Part B, Alternative II, item *7, 264.151(h)(2) Guarantee For Liability Coverage, Certification of Valid Claim Recitals, item 13.(a), and Recitals, item 14, 264.151(i), item 2.(e), 264.151(j), item 2.(d), 264.151(k), Irrevocable Standby Letter of Credit and CERTIFICATE OF VALID CLAIM, 264.151(1), 264.151(1), CERTIFICATION OF VALID CLAIM, 264.151(m)(1), CERTIFICATION OF VALID CLAIM, Section 8.(c), 264.151(n)(1), under STANDBY TRUST AGREEMENT Section 3.(c)(1), Section 3.(e)(3), and Sections 12 and 16, 264.175(b)(1),264.193(c)(4) Note, (d)(4), (e)(2)(ii) and (iii), (e)(2)(v)(A) and (B), (e)(3)(i) and (ii), (g)(1)(iii) and (iv), and (g)(2)(i)(A), 264.221(c)(1)(i)(B), (c)(2)(ii), (e)(1), and (e)(2)(i)(B) and (C), 264.223(b)(1), 264.226(a)(2), 264.251(a)(2)(i)(A),

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
		264.252(a) and (b), 264.259(b), 264.280(c)(7) and (d) introductory paragraph, 264.283(a), 264.301(c)(2), 264.301(e)(2)(i)(B), 264.302(a), (b) and (b)(1), 264.314(e)(2), 264.317(a) introductory paragraph, 264.344(b), 264.552(e)(4)(iii), (e)(4)(iv)(F), and (e)(6)(iii)(E), 264.553(e) introductory paragraph, 264.554(a) introductory paragraph, 264.555(e)(6), 264.573(a)(1), (a)(4)(i), (a)(5), (b) introductory paragraph, and (m)(2) and (m)(3), 264.600, 264.601(a) introductory paragraph, (b)(11), and (c)(4), 264.1030(c), 264.1033(f)(2)(vii)(B), 264.1034(b)(2), 264.1035(c)(4)(i) and (ii), 264.1050(f), 264.1058(c)(1), 264.1064(c)(3), 264.1080(a) and (c), 264.1090(c), 264.1101(b)(3)(iii),(c)(3) introductory paragraph, (c)(3)(i), and (d) introductory paragraph, 264.1102(a), Part 264, Appendix I/Table 1, Part 264, Appendix I/Table 2, Section 2.(d), 265.1(c)(4)(i), 265.1(c)(6), 265.12(a)(1), 265.14(b)(1), 265.16(b), 265.19(c)(2), 265.56(b), 265.90(d) introductory paragraph, 265.110(b)(4), 265.111(c), 265.112(b)(5), 265.112(d)(4), 265.113(b) introductory paragraph, 265.113(e)(4), 265.117(b) introductory paragraph, 265.119(b)(1)(ii), 265.140(b) introductory paragraph and (b)(2), 265.142(a), 265.145(e)(11), 265.147(a)(1)(i) and (b)(1)(i) and (ii), 265.174, 265.193(e)(2)(v)(A) and (B) and (i)(2), 265.194(b)(1) and (2), 265.197(b), 265.201(c) introductory paragraph, 265.221(a) and(d)(2)(i)(A) and (B), 265.224(b)(1), 265.228(a)(2)(iii)(D) and(b)(2), 265.229(b)(2) and (b)(3), 265.255(b), 265.259(b)(1), 265.280(a)(4), 265.281(a)(1), 265.301(a), (d)(1), and (d)(2)(i)(B), 265.302(b), 265.303(b)(1), 265.312(a)(1), 265.314(e)(1)(ii) and(f)(2), 265.316 introductory paragraph, (c) and (d), 265.405(a)(1), 265.441(c), 265.443(a)(4)(i) and (b) introductory paragraph, 265.445(b), 265.1033(f)(2)(ii), 265.1035(b)(2) introductory paragraph, (b)(2)(i), and 265.1035(c)(4)(i), 265.1063(b)(4)(ii), 265.1080(a), 265.1085(h)(3) introductory paragraph, 265.1087(b), 265.1090(f)(1), 265.1100(d), 265.1101(b)(3)(i)(B), (b)(3)(iii), (c)(3) introductory paragraph, and (d) introductory paragraph, Part 265, Appendix I/Tables 1–2, Part 265, Appendix V/Table, Part 265, Appendix VI, 266.70(a), 266.80(a)/Table, 266.100(b)(2)(iv), 266.100(d)(3)(i)(A), 266.100(g) introductory paragraph, 266.102(a)(2)(vi), 266.102(e)(3)(i)(E), (e)(5)(i)(C), (e)(6)(ii)(B)(2), and (e)(8)(iii), 266.103(a)(4)(vii), 266.103(b)(2)(v)(B)(2), (b)(5)(ii)(A), and (b)(6)(viii)(A), 266.103(c)(1)(i), (c)(1)(ii)(A)(2), (c)(1)(ix) introductory paragraph, (c)(1)(ix)(A), and (c)(4)(iv)(C)(1), 266.103(g)(1)(i), 266.106(d)(1), 266.109(a)(2)(ii) and (b) introductory paragraph, Part 266, subpart N heading, Part 266, Appendices III through VI, Part 266, Appendix VIII, 3(b)(2), Part 266, Appendix XIII, 267.147(f)(2)(i)(A), 268.2(g), 268.4(a)(3) introductory paragraph, 268.6(c)(5) introductory paragraph, 268.7(a)(1), (a)(3)(ii), (a)(4)/Table entry 8, (b)(3)(ii)/Table, entry 5, (b)(4)(ii), (c)(2), (d) introductory paragraph, (d)(1) introductory paragraph, (d)(1)(i)–(iii), and (d)(2) and (d)(3), 268.14(b) and (c), 268.40(g), 268.40/Table "TREATMENT STANDARDS FOR HAZARDOUS WASTES", 268.42/Table 1, 268.44(c), 268.45/Table 1, 268.48/Table "UNIVERSAL TREATMENT STANDARDS", 268.49(d), 268.50(c), 268.50(g), Part 268, Appendix VIII, 270.1(a)(2)/Table, 270.1(b) introductory paragraph, 270.1(c)(1)(iii), 270.1(c)(3)(i) introductory paragraph, 270.2 "On-site" and "Publicly owned treatment works (POTW)", 270.10(j), 270.11(d)(1) and (2), 270.13(k)(7), 270.14(a), (b)(11)(ii)(B), (b)(19)(iii), and (b)(21), 270.17(f), 270.18(b) and (g), 270.20(i)(2), 270.26(c)(15), 270.33(b) introductory paragraph, 270.41(c), 270.42(d)(2)(i), 270.42, Appendix I, 270.70(a) introductory paragraph, 270.72(b)(2), 273.9 "Universal waste", 273.13(b) introductory paragraph, 273.14(a), 273.34(a), 279.1 "Petroleum refining facility", 279.10(b)(2) introductory paragraph, 279.11, 279.11/Table 1, 279.43(c)(3)(i) and (c)(5), 279.44(a) and (c)(2), 279.45(a), 279.52(a) and (b), (b)(1)(ii) and (b)(6)(ii) and (iii), 279.55(a) introductory paragraph, and (b)(2)(i)(B), 279.56(a)(2), 279.57(a)(2)(ii), 279.59, 279.63(b)(3), 279.64(e), and 279.70(b)(1), as amended September 25, 2015, effective on October 18, 2015.
4. Hazardous Waste Technical Corrections and Clarification Rule. (Checklist 228).	77 FR 22229–22232 April 13, 2012	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.32(a), entry for K107, and 266.20(b), as amended September 25, 2015, effective on October 18, 2015.
5. Conditional Exclusions for Solvent Contaminated Wipes. (Checklist 229).	78 FR 46448–46485 July 31, 2013	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.10 "No free liquids", 260.10 "Solvent-contaminated wipe", 260.10 "Wipe", 261.4(a)(26), and 261.4(b)(18), as amended September 25, 2015, effective on October 18, 2015.

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
6. Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities. (Checklist 230).	79 FR 350–364 January 3, 2014	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.10 "Carbon dioxide stream", and 261.4(h), as amended September 25, 2015, effective on October 18, 2015.
7. Hazardous Waste Electronic Manifest Rule. (Checklist 231).	79 FR 7518–7563 February 7, 2014	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.2, 260.10 "Electronic manifest (or e-manifest)", "Electronic manifest system (or e-manifest system)", "Manifest", "User of the electronic manifest system", 262.20(a)(3), 262.24, 262.25, 263.20(a), 263.25(a), 264.71(a)(2), 264.71(g)–(l), 265.71(a)(2), 265.71(g)–(l), as amended September 25, 2015, effective on October 18, 2015. (See Section I. Electronic Manifest provisions that are non-delegable to States.)
8. Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule. (Checklist 232).	79 FR 36220–36231 June 26, 2014	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.10 "CRT exporter", 261.39(a)(5)(i)(F), and (a)(5)(x) and (xi), and 261.41(a) and (b), as amended September 25, 2015, effective on October 18, 2015.

[1] More stringent provisions.

VIII. Where are the revised State rules different from the Federal rules?

The State of Arkansas regulations that are more stringent than the Federal regulations are documented in the above chart. For enforcement purposes, the EPA does not enforce broader in scope provisions.

IX. Electronic manifest provisions that are non-delegable to States.

The Federal Hazardous Waste Electronic Manifest Rule (79 FR 7518; February 7, 2014) contains several provisions which are non-delegable to States. Specifically, States cannot receive authorization to establish a Federal user under the electronic manifest requirements, nor can States receive authorization for the electronic signature requirements, resulting in the States' inability to implement the provisions listed below. However, EPA strongly recommends States adopt these provisions while retaining the EPA rule language unchanged; Arkansas has adopted the Electronic Manifest Rule using this approach. The non-delegable provisions and provisions where States must retain references to "EPA" are: 40 CFR 260.10 "electronic manifest", "electronic manifest system", "use of the electronic manifest system"; 262.24(g); 262.25; 263.20(a)(2); 262.20(a)(3)(ii); 263.20(a)(8); 264.71(a)(2)(v); 264.71(j); 265.71(a)(2)(v); and 265.71(j).

X. Who handles permits after the authorization takes effect?

The State of Arkansas will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will not issue any more new permits or new portions of permits for the provisions listed in the chart in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which ADEQ is not yet authorized.

XI. How does this action affect Indian Country (18 U.S.C. 1151) in Arkansas?

The State of Arkansas Hazardous Program is not being authorized to operate in Indian Country.

XII. What is codification and is the EPA codifying Arkansas' hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart E for this authorization of Arkansas' program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** document.

XIII. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (73 FR 3821, January 21, 2011) is also exempt from review under Executive orders 12866 (56 FR 51735, October 4, 1993). This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application; to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 11, 2016.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 14, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–18433 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 147, 153, 154, 155, 156, and 158

[CMS–9937–F2]

RIN–0938–AS57

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction and correcting amendment.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the March 8, 2016 **Federal Register** (81 FR 12204 through 12352) entitled "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017." The effective date for the rule was May 9, 2016.

DATES:

Effective Date: This correcting document is effective August 11, 2016.

Applicability Date: The corrections indicated in this document are applicable beginning May 9, 2016.

FOR FURTHER INFORMATION CONTACT: Allison Yadsko (410) 786–1740.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2016–04439 (81 FR 12204), the final rule entitled "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017" (2017 Payment Notice), there were technical errors that are identified and corrected in section IV, the Correction of Errors. These corrections are applicable as of May 9, 2016.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 12296, the phrase "paragraphs (c)(1)(ii) and (c)(2)(iii) of this paragraph" should include a reference to "(c)(3)(ii)." This correction clarifies how the provisions are at least as stringent as the requirements of paragraph (c) and aligns with the next paragraph that clarifies we do not believe that applying timeframes less stringent than those in the current § 156.122(c) would benefit enrollees.

On pages 12310 and 12311 the word "consecutive" should have been attached to the description of the grace period for enrollees receiving advance payments of the premium tax credit (APTC), for the description to be consistent with the regulation text that was promulgated prior to the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; Final Rule. This correction accurately reflects the length of the grace period for enrollees receiving APTC as being 3 consecutive months.

B. Summary of Errors in Regulation Text

On page 12349, in § 156.122(c)(4)(i)(D), we inadvertently omitted a cross-reference to paragraph (c)(3)(ii).

On page 12350, in § 156.270(d) introductory text, we inadvertently omitted the word "consecutive" from the language describing the length of the grace period for enrollees receiving APTC.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Section 553(d) of the APA mandates a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(3)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements. Section 553(b)(3)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest; and includes a statement of the finding and the reasons for it in the notice. In addition, section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects typographical and technical errors in the 2017 Payment Notice. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies that were adopted subject to notice and comment procedures in the 2017 Payment Notice. As a result, the corrections made through this correcting document are intended to ensure that the 2017 Payment Notice accurately reflects the policies adopted in that rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the 2017 Payment Notice or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the 2017 Payment Notice accurately reflects our final policies as soon as possible following the date they take effect. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the 2017 Payment Notice accurately reflects these policies. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

IV. Correction of Errors in the Preamble

In FR Doc. 2016–04439 (81 FR 12204), published March 8, 2016, make the following corrections:

1. On page 12296, in the second column, in the first full paragraph, lines 18 and 19, the phrase "paragraphs (c)(1)(ii) and (c)(2)(iii) of this paragraph" is corrected to read "paragraphs (c)(1)(ii), (c)(2)(iii), and (c)(3)(ii) of this section".

2. On page 12310,

a. In the third column, second full paragraph, line 3, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

b. In the third column, second full paragraph, line 29, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

c. In the third column, second full paragraph, line 38, the phrase "grace period of 3 months" is corrected to read "grace period of 3 consecutive months".

3. On page 12311,

a. In the first column, in the first full paragraph, line 7, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

b. In the first column, in the first full paragraph, line 17, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

c. In the first column, in the first full paragraph, lines 24 through 25, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

d. In the second column, in the first full paragraph, line 8, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

e. In the second column, in the second full paragraph, line 14, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

f. In the second column, in the third full paragraph, line 13, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

g. In the second column, in the third full paragraph, line 22, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

h. In the third column, in the first partial paragraph, line 12, the phrase "3-month grace period" is corrected to read "3 consecutive month grace period".

List of Subjects in 45 CFR Part 156

Administrative practice and procedure, Advertising, American Indian/Alaska Natives, Conflict of interest, Consumer protection, Cost-sharing reductions, Essential Health Benefits, Prescription drug benefit, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Individuals with disabilities, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

Accordingly, the Department of Health and Human Services corrects 45 CFR part 156 by making the following correcting amendments:

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 1. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

§ 156.122 [Amended]

■ 2. Section 156.122(c)(4)(i)(D) is amended by removing the phrase "paragraphs (c)(1)(ii) and (c)(2)(iii) of this section" and adding in its place the phrase "paragraphs (c)(1)(ii), (c)(2)(iii), and (c)(3)(ii) of this section".

§ 156.270 [Amended]

■ 3. Section 156.270 is amended by amending paragraph (d) to remove the term "3 months" and add in its place the phrase "3 consecutive months".

Dated: August 5, 2016.

Madhura Valverde,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2016–19108 Filed 8–10–16; 8:45 am]

BILLING CODE 4120–01–P

DENALI COMMISSION

45 CFR Chapter IX

National Environmental Policy Act Implementing Procedures and Categorical Exclusions

AGENCY: Denali Commission.

ACTION: Notice of final NEPA implementation rule.

SUMMARY: This document contains the final Denali Commission policies and procedures for compliance with the National Environmental Policy Act of 1969 (NEPA), as amended. This action is necessary to implement these procedures and make them available to the public on the Commission's internet site.

DATES: Effective September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. John Whittington, 907–271–1414.

SUPPLEMENTARY INFORMATION:

General

Established by Congress in 1998, the Denali Commission (Commission) is an innovative federal-state partnership designed to provide critical utilities, infrastructure, and economic support throughout Alaska. With the creation of the Commission, Congress acknowledged the need for increased inter-agency cooperation and focus on Alaska's remote communities. Since its first meeting in April 1999, the Commission is credited with constructing numerous cost-shared infrastructure projects across the State that exemplify effective and efficient partnership between federal and state agencies, and the private sector.

The National Environmental Policy Act (NEPA) and implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508) established a broad national policy to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans. The CEQ regulations implementing the procedural provisions of NEPA are designed to ensure that this national policy, environmental considerations, and associated public concerns are given careful attention and appropriate weight in all decisions of the federal government. Sections 102(2) of NEPA and 40 CFR 1505.1 and 1507.3 require federal agencies to develop and, as needed, revise implementing procedures consistent with the CEQ regulations. The Denali Commission is issuing the following NEPA implementing procedures that comply with NEPA and supplement the CEQ regulations. The remaining sections of **SUPPLEMENTARY INFORMATION** will provide background. Following the **SUPPLEMENTARY INFORMATION** is the text of the final procedures.

Background

In accordance with CEQ regulations (40 CFR 1507.3), the Commission consulted with the CEQ prior to publication of the proposed rule. On August 10, 2004, the Commission published a proposed rule in the **Federal Register** (69 FR 48435) and invited public comment. The Commission considered the comments received on the 2004 proposed rule. On March 6, 2006, however, the Commission published a document in the **Federal Register** withdrawing the 2004 proposed rule (71 FR 13563). At the time, the Commission intended to adopt guidelines for implementing NEPA instead of promulgating a final rule. Since that time, however, the Commission concluded that the approach outlined in the 2004 proposed rule was appropriate and issued a revised version of the proposed rule for review and comment in the **Federal Register** on December 21, 2015 (80 FR 79292) that reflected the Commission's consideration of and responses to public comments received on the 2004 proposed rule.

The final rule published today reflects the Commission's consideration of and responses to the public comments received on the revised proposed rule.

These procedures are final and will be made available to the public in the Code of Federal Regulations (CFR) and on the Commission's internet site at *https://www.denali.gov.*

Comments and Responses

The Commission received, reviewed and considered one comment on the proposed 2015 rule. The comment, however, was not substantive and no changes were made in response to the comment. Also considered were any substantive changes resulting from consultation with the CEQ.

Subpart A—General

Section 900.106 Denali Commission Responsibility

Paragraph (e) was added to clarify that the Approving Official will be responsible for coordinating comments with cooperating agencies and other federal agencies.

Section 900.108 Public Involvement

Language was added requiring hard copies of NEPA documents to be provided to local governmental and/or tribal entities in the effected communities.

Subpart C—Environmental Assessments

Section 900.302 General Considerations in Preparing Environmental Assessments

The Commission added language clarifying the process for adoption of other environmental documents and incorporation by reference of other documents into an EA. Paragraphs (c) and (d) were eliminated because they were redundant and paragraph (e) was renumbered as paragraph (c).

Section 900.304 Actions Resulting From Assessment

Paragraph (c) (Mitigated FONSI) was added to clarify the distinction between a mitigated FONSI and accepting a proposal with modifications (paragraph (b)).

Subpart D—Environmental Impact Statements

Section 900.405 Proposals Normally Requiring an EIS

The Commission identified large scale infrastructure construction projects such as the relocation of an entire community as projects normally requiring an EIS.

List of Subjects in 45 CFR Part 900

Administrative practice and procedure, Environmental impact statements, Environmental protection.

For the reasons stated in the preamble, the Denali Commission is adding chapter IX, consisting of parts 900 through 999, to title 45 of the CFR to read as follows:

CHAPTER IX—Denali Commission

PART 900—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

PARTS 901–999 [RESERVED]

PART 900—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Subpart A—General

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Appendix A to Part 900—Categorical Exclusions

Authority: 42 U.S.C. 3121, 4321; 40 CFR parts 1500 through1508.

Subpart A—General

§ 900.101 Purpose.

This regulation prescribes the policies and procedures of the Denali Commission (Commission) for implementing the National Environmental Policy Act of 1969 (NEPA) as amended (42 U.S.C. 4321–4347) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500 through 1508). This regulation also addresses other related federal environmental laws, statutes, regulations, and Executive Orders that apply to Commission actions. This part adopts, supplements, and is to be used in conjunction with, 40 CFR parts 1500 through 1508, consistent with 40 CFR 1507.3.

§ 900.102 Environmental policy.

It is the policy of the Commission to:

(a) Comply with the procedures and policies of NEPA and other related environmental laws, regulations, and orders applicable to Commission actions;

(b) Provide guidance to applicants responsible for ensuring that proposals comply with all appropriate Commission requirements;

(c) Integrate NEPA requirements and other planning and environmental review procedures required by law or Commission practice so that all such procedures run concurrently rather than consecutively;

(d) Encourage and facilitate public involvement in Commission decisions that affect the quality of the human environment;

(e) Use the NEPA process to identify and assess reasonable alternatives to proposed Commission actions to avoid or minimize adverse effects upon the quality of the human environment;

(f) Use all practicable means consistent with NEPA and other essential considerations of national policy to restore or enhance the quality of the human environment and avoid, minimize, or otherwise mitigate any possible adverse effects of the Commission's actions upon the quality of the human environment; and

(g) Consider and give important weight to factors including customary and traditional uses of resources, recreation, and the objectives of Federal, regional, State, local and tribal land use plans, policies, and controls for the area concerned in developing proposals and making decisions in order to achieve a proper balance between the development and utilization of natural, cultural and human resources and the protection and enhancement of environmental quality (see NEPA section 101 and 40 CFR 1508.14). In particular the Commission will consider potential effects on subsistence activities, which are critically important to the daily existence of Alaska Native villages.

§ 900.103 Terms and abbreviations.

(a) For the purposes of this part, the definitions in the CEQ Regulations, 40 CFR parts 1500 through 1508, are adopted and supplemented as set out in paragraphs (a)(1) through (5) of this section. In the event of a conflict the CEQ Regulations apply.

(1) *Action.* Action and Federal action as defined in 40 CFR 1508.18, include projects, programs, plans, or policies, subject to the Commission's control and responsibility.

(2) *Applicant.* The federal, state, local government or non-governmental partner or organization applying to the Commission for financial assistance or other approval. An applicant may also be a partner organization in receipt of award funds.

(3) *Approving Official.* The Denali Commission staff member designated by the Federal Co-Chair or his/her designee to fulfill the responsibilities defined in § 900.106, including overseeing development of and approval of the NEPA document.

(4) *Commission proposal (or proposal).* A proposal, as defined at 40 CFR 1508.23, is a Commission proposal whether initiated by the Commission, another federal agency, or an applicant.

(5) *Federal Co-Chair.* One of the seven members of the Commission, appointed by the Secretary of Commerce, as defined in the Denali Commission Act of 1998, 42 U.S.C. 3121, Public Law 105–277.

(b) The following abbreviations are used throughout this part:

(1) CATEX—Categorical exclusions;

(2) CEQ—Council on Environmental Quality;

(3) EA—Environmental assessment;

(4) EIS—Environmental impact statement;

(5) FONSI—Finding of no significant impact;

(6) NEPA—National Environmental Policy Act of 1969, as amended;

(7) NOI—Notice of intent; and

(8) ROD—Record of decision.

§ 900.104 Federal and intergovernmental relationships.

The Denali Commission was created to deliver the services of the federal government in the most cost-effective manner practicable. In order to reduce administrative and overhead costs, the Commission partners with federal, state and local agencies and Alaska Native villages and commonly depends on these governmental agencies for project management. Consequently, the Commission generally relies on the expertise and processes already in use by partnering agencies to help prepare Commission NEPA analyses and documents.

(a) With federal partners, the Commission will work as either a joint lead agency (40 CFR 1501.5 and 1508.16) or cooperating agency (40 CFR 1501.6 and 1508.5). The Commission may invite other Federal agencies to serve as the lead agency, a joint lead agency, or as a cooperating agency.

(b) Consistent with 40 CFR 1508.5, the Commission will typically invite Alaska Native villages and state and local government partners to serve as cooperating agencies.

(c) Requests for the Commission to serve as a lead agency (40 CFR 1501.5(d)), for CEQ to determine which Federal agency shall be the lead agency (40 CFR 1501.5(e)), or for the Commission to serve as a cooperating agency (40 CFR 1501.6(a)(1)) shall be mailed to the Commission office.

§ 900.105 Applicant responsibility.

(a) Applicants shall work under Commission direction provided by the Approving Official, and assist the Commission in fulfilling its NEPA obligations by preparing NEPA analyses and documents that comply with the provisions of NEPA (42 U.S.C. 4321–4347), the CEQ Regulations (40 CFR parts 1500 through 1508), and the requirements set forth in this part.

(b) Applicants shall follow Commission direction when they assist the Commission with the following responsibilities, among others:

(1) Prepare and disseminate applicable environmental documentation concurrent with a proposal's engineering, planning, and design;

(2) Create and distribute public notices;

(3) Coordinate public hearings and meetings as required;

(4) Submit all environmental documents created pursuant to this part to the Commission for review and approval before public distribution;

(5) Participate in all Commission-conducted hearings or meetings;

(6) Consult with the Commission prior to obtaining the services of an environmental consultant; in the case that an EIS is required, the consultant or contractor will be selected by the Commission; and

(7) Implement mitigation measures included as voluntary commitments by the applicant or as requirements of the applicant in environmental documents.

§ 900.106 Denali Commission responsibility.

(a) The Federal Co-Chair or his/her designee shall designate an Approving Official for each Commission proposal, and shall provide environmental guidance to the Approving Official;

(b) The Approving Official shall provide direction and guidance to the applicant as well as identification and development of required analyses and documentation;

(c) The Approving Official shall make an independent evaluation of the environmental issues, take responsibility for the scope and content of the environmental document (EA or EIS), and make the environmental finding;

(d) The Approving Official shall ensure mitigation measures included in environmental documents are implemented; and

(e) The Approving official shall be responsible for coordinating communications with cooperating agencies and other federal agencies.

§ 900.107 Role of lead and cooperating agencies.

In accordance with § 900.104, the Commission may defer the lead agency role to other federal agencies in accordance with 40 CFR 1501.5, and the Commission will then exercise its role as either a joint lead or a cooperating agency in accordance with 40 CFR 1501.6.

§ 900.108 Public involvement.

(a) When public involvement is required pursuant to subparts C and D of this part, interested persons and the affected public shall be provided notice of the availability of environmental documents, NEPA-related hearings, and public meetings. Such notice will be made on the Commission Web site and other means such that the community is notified (*e.g.,* community postings, newspaper, radio or television).

(b) Applicants shall assist the Commission in providing the opportunity for public participation and considering the public comments on the proposal as described in subparts C and D of this part.

(c) Interested persons can obtain information or status reports on EISs and other elements of the NEPA process from the Commission's office at 510 L Street, Suite 410; Anchorage, Alaska 99501; or on the Commission Web site at *http://www.denali.gov.* Telephone: (907) 271–1414. The Commission will provide hard copies of NEPA documents to governmental and/or tribal entities in the affected communities.

(d) In the interests of national security or the public health, safety, or welfare, the Commission may reduce any time periods that the Commission has established and that are not required by the CEQ Regulations. The Commission shall publish a notice on the Web site at *http://www.denali.gov* and notify interested parties (see 40 CFR 1506.6) specifying the revised time periods for the proposed action and the rationale for the reduction.

Subpart B—Environmental Review Procedures

§ 900.201 Environmental review process.

(a) *General.* The environmental review process is the investigation of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

(b) *Early coordination.* Applicants will contact the Commission and work with the Approving Official to begin the environmental review process as soon as Denali Commission assistance is projected. Environmental issues shall be identified and considered early in the proposal planning process. A systematic, interdisciplinary approach that includes community involvement and intergovernmental coordination to expand the potential sources of information and identify areas of concern will be used. Environmental permits and other forms of approval, concurrence, or consultation may be required. The planning process shall include permitting and other review processes to ensure that necessary information will be collected and provided to permitting and reviewing agencies in a timely manner.

§ 900.202 Emergency actions.

(a) *General.* Emergency circumstances may require immediate actions that preclude following standard NEPA processes. The Council shall limit alternative arrangements to those actions that are necessary to control the immediate impacts of the emergency. In the event of emergency circumstances, the Approving Official should coordinate with the Federal Co-Chair as soon as practicable. Immediate emergency actions necessary to protect the lives and safety of the public or prevent adverse impacts to ecological resources and functions should never be delayed in order to comply with these NEPA procedures. Alternative arrangements for NEPA compliance are permitted for emergency actions pursuant to paragraphs (b) through (d) of this section.

(b) *Categorical exclusion (CATEX).* When emergency circumstances make it necessary to determine whether an extraordinary circumstance would preclude the use of a CATEX, the Approving Official shall make the determination as soon as practicable. If an extraordinary circumstance exists, the Approving Official shall comply with paragraphs (c) and (d) of this section, as applicable.

(c) *Environmental assessment (EA).* When emergency circumstances make it necessary to take an action that requires an EA before the EA can be completed, the Approving Official will consult with the Federal Co-Chair to develop alternative arrangements to meet the requirements of these NEPA implementing procedures and CEQ Regulations pertaining to EAs. Alternative arrangements should focus on minimizing adverse environmental impacts of the proposed action and the emergency. To the maximum extent practicable, these alternative arrangements should include the content, interagency coordination, and public notification and involvement that would normally be undertaken for an EA for the action at issue and cannot alter the requirements of the CEQ Regulations at 40 CFR 1508.9(a)(1) and (b). The Federal Co-Chair may grant an alternative arrangement. Any alternative arrangement shall be documented. The Federal Co-Chair will inform CEQ of the alternative arrangements at the earliest opportunity.

(d) *Environmental Impact Statement (EIS).* Where emergency circumstances make it necessary to take actions with significant environmental impacts without observing other provisions of these NEPA implementing procedures and the CEQ Regulations (see 40 CFR 1506.11) the Federal Co-Chair may consult with CEQ about alternative arrangements for implementation of NEPA. In these situations, the Commission may reduce processing times or, if the emergency situation warrants, abbreviate its preparation and processing of EISs. Any request for alternative arrangements must be submitted by the Federal Co-Chair to CEQ and notice of a potential request should be provided to CEQ at the earliest opportunity. For projects undertaken by an applicant, the Approving Official will inform the Federal Co-Chair about the emergency. The Federal Co-Chair will consult CEQ requesting the alternative arrangements for complying with NEPA.

§ 900.203 Determination of federal actions.

(a) The Commission shall determine whether any Commission proposal:

(1) Is categorically excluded from preparation of either an EA or an EIS;

(2) Requires preparation of an EA; or

(3) Requires preparation of an EIS.

(b) Notwithstanding any other provision of this part, the Commission may prepare a NEPA document to assist any Commission action at any time in order to further the purposes of NEPA. This NEPA document may be done to analyze the consequences of ongoing Commission activities, to support Commission planning, to assess the need for mitigation, to disclose fully the potential environmental consequences of Commission actions, or for any other reason. Documents prepared under this paragraph shall be prepared in the same manner as Commission documents prepared under this part.

§ 900.204 Categorical exclusions.

(a) *General.* A categorical exclusion (CATEX) is defined in 40 CFR 1508.4 as a category of actions which do not individually or cumulatively have a significant effect on the human environment and, for which in the absence of extraordinary circumstances or sensitive resources, neither an EA nor an EIS is required. Actions that meet the conditions in paragraph (b) of this section and are listed in section A of appendix A of this part can be categorically excluded from further analysis and documentation in an EA or EIS. Actions that meet the screening conditions in paragraph (b) of this section and are listed in section B of appendix A require satisfactory completion of a Denali Commission CATEX checklist in order to be categorically excluded from further analysis and documentation in an EA or EIS.

(b) *Conditions.* The following three conditions must be met for an action to be categorically excluded from further analysis in an EA or EIS.

(1) The action has not been segmented (too narrowly defined or broken down into small parts in order minimize its potential effects and avoid a higher level of NEPA review) and its scope includes the consideration of connected actions and, when evaluating extraordinary circumstances, cumulative impacts.

(2) No extraordinary circumstances described in paragraph (c) of this section exist, unless resolved through other regulatory means.

(3) One categorical exclusion described in either section of appendix A of this part encompasses the proposed action.

(c) *Extraordinary circumstances.* Any action that normally would be classified as a CATEX but could involve extraordinary circumstances will require appropriate environmental review documented in a Denali Commission CATEX checklist to determine if the CATEX classification is proper or if an EA or EIS should be prepared. Extraordinary circumstances to be considered include those likely to:

(1) Have a reasonable likelihood of significant impacts on public health, public safety, or the environment;

(2) Have effects on the environment that are likely to be highly controversial or involve unresolved conflicts concerning alternative uses of available resources;

(3) Have possible effects on the human environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial;

(4) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;

(5) Relate to other actions with individually insignificant but cumulatively significant environmental effects;

(6) Have a greater scope or size than is normal for the category of action;

(7) Have the potential to degrade already existing poor environmental conditions or to initiate a degrading influence, activity, or effect in areas not already significantly modified from their natural condition;

(8) Have a disproportionately high and adverse effect on low income or minority populations (see Executive Order 12898);

(9) Limit access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or adversely affect the physical integrity of such sacred sites (see Executive Order 13007);

(10) Threaten a violation of a federal, tribal, state or local law or requirement imposed for the protection of the environment;

(11) Have a reasonable likelihood of significant impact to subsistence activities; or

(12) Have a reasonable likelihood of significant impacts on environmentally sensitive resources, such as:

(i) Properties listed, or eligible for listing, in the National Register of Historic Places;

(ii) Species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or their habitat; or

(iii) Natural resources and unique geographic characteristics such as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; special aquatic sites (defined under Section 404 of the Clean Water Act); floodplains; national monuments; and other ecologically significant or critical areas.

§ 900.205 Environmental assessment.

(a) An EA is required for all proposals, except those exempt from NEPA or categorically excluded under this part, and those requiring or determined to require an EIS. EAs provide sufficient evidence and analysis to determine whether to prepare an EIS or a finding of no significant impact (FONSI).

(b) In addition, an EA may be prepared on any action at any time in order to assist in planning and decision making, to aid in the Commission's compliance with NEPA when no EIS is necessary, or to facilitate EIS preparation.

(c) EAs shall be prepared in accordance with subpart C of this part and shall contain analyses to support conclusions regarding environmental impacts. If a FONSI is proposed, it shall be prepared in accordance with § 900.305.

§ 900.206 Environmental impact statement.

An EIS is required when the project is determined to have a potentially significant impact on the human environment. EISs shall be prepared in accordance with subpart D of this part.

§ 900.207 Programmatic environmental reviews.

(a) A programmatic NEPA review is used to assess the environmental impacts of a proposed action that is broad in reach, such as a program, plan, or policy (see 40 CFR 1502.4). Analyses of subsequent actions that fall within the program, plan, or policy may be tiered to the programmatic review, as described in 40 CFR 1502.20 and 1508.28.

(b) Programmatic NEPA reviews may take the form of a programmatic EA or a programmatic EIS.

(c) A programmatic EA shall meet all of the requirements for EAs in subpart C of this part, including those for content and public involvement. In order to adopt a programmatic EA prepared by another agency that did not provide the same public involvement opportunities as the Commission, the Commission shall provide notice of the availability of the programmatic EA and make it available for public comment consistent with § 900.303(b) and (c) before adopting it.

(d) A programmatic EIS shall meet all of the requirements for EISs in subpart D of this part and in 40 CFR parts 1500 through 1508.

Subpart C—Environmental Assessments

§ 900.301 Content.

(a) An EA shall include brief discussions of the need for the proposal; of alternatives to the proposal as required by NEPA section 102(2)(E); and of the environmental impacts of the proposal and alternatives. The EA shall also include a listing of agencies and persons consulted in the preparation of the EA.

(b) An EA may describe a broad range of alternatives and proposed mitigation measures to facilitate planning and decisionmaking.

(c) The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that those requirements can be met.

(d) The EA should be a concise public document. The level of detail and depth of impact analysis will normally be limited to the minimum needed to determine the significance of potential environmental effects.

§ 900.302 General considerations in preparing environmental assessments.

(a) *Adoption of an EA.* The Commission may adopt an EA prepared for a proposal before the Commission by another agency or an applicant when the EA, or a portion thereof, addresses the proposed Commission action and meets the standards for an adequate analysis under this part and relevant provisions of 40 CFR parts 1500 through 1508, provided that the Commission makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

(b) *Incorporation by reference into the EA.* Any document may be incorporated by reference in accordance with 40 CFR 1502.21 and used in preparing an EA in accordance with 40 CFR 1501.4(e) and 1506.5(a), provided that the Commission makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

§ 900.303 Public involvement.

(a) Commission approval is required before an EA is made available to the public and the notice of availability is published.

(b) The public shall be provided notice of the availability of EAs and draft FONSIs in accordance with 40 CFR 1506.6 and § 900.108(a) by the Approving Official. The Approving Official is responsible for making the EA available for public inspection and will provide hard copies on request to the affected units of Alaska Native/American Indian tribal organizations and/or local government.

(c) EAs and draft FONSIs will be available for public comment for not less than 15 calendar days but may be published for a longer period of time as determined by the Approving Official.

(d) Final Commission action will be taken after public comments received on an EA and draft FONSI are reviewed and considered.

§ 900.304 Actions resulting from assessment.

(a) *Accepted without modification.* The Commission may accept a proposal without modifications if the EA indicates that the proposal does not have significant environmental impacts and a FONSI is prepared in accordance with § 900.305.

(b) *Accepted with modification.* If an EA identifies potentially significant environmental impacts, the proposal may be modified to eliminate such impacts. Proposals so modified may be accepted by the Commission if the proposed changes are evaluated in an EA and a FONSI is prepared in accordance with § 900.305.

(c) *Mitigated FONSI.* If mitigation is required to reduce the impacts below significant the FONSI shall identify the mitigation and describe applicable monitoring and enforcement measures intended to ensure the implementation of the mitigation measures.

(d) *Prepare an EIS.* The Commission shall require that the proposal be evaluated in an EIS, prepared in accordance with subpart D to this part, if the EA indicates significant environmental impacts that cannot be mitigated below a specified level of significance.

(e) *Rejected.* The Commission may always elect to reject a proposal.

§ 900.305 Findings of no significant impact.

(a) *Definition.* Finding of no significant impact (FONSI) means a document by the Commission briefly presenting the reasons why an action, not otherwise excluded as provided in § 900.204, will not have a significant impact on the human environment and for which an EIS will not be prepared.

(b) *Applicant responsibility.* The applicant shall assist the Commission with preparing the EA. The Commission remains responsible for compiling the public hearing summary or minutes, where applicable; and copies of any written comments received and responses thereto.

(c) *Content.* A FONSI shall include the EA or a summary of it and shall note any other environmental documents related to it (40 CFR 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

(d) *Publication.* The Commission shall make the final FONSI available to the public on the Commission Web site.

(e) *Special circumstances.* The FONSI notice of availability will be made available for public review (including State and areawide clearinghouses) for 30 days before the Commission makes its final determination whether to prepare an environmental impact statement and before the action may begin (40 CFR 1501.4(e)(2)) where:

(1) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under § 900.405; or

(2) The nature of the proposed action is one without precedent.

§ 900.306 Proposals normally requiring an EA.

Proposals that normally require preparation of an EA include the following:

(a) Initial field demonstration of a new technology; and

(b) Field trials of a new product or new uses of an existing technology.

Subpart D—Environmental Impact Statements

§ 900.401 Notice of intent and scoping.

(a) The Commission shall publish a NOI, as described in 40 CFR 1508.22, in the **Federal Register** as soon as practicable after a decision is made to prepare an EIS, in accordance with 40 CFR 1501.7. If there will be a lengthy period of time between the Commission's decision to prepare an EIS and its actual preparation, the Commission may defer publication of the NOI until a reasonable time before preparing the EIS, provided that the Commission allows a reasonable opportunity for interested parties to participate in the EIS process. Consistent with § 900.201(b), the Commission and the applicant will coordinate during the time period prior to the publication of the NOI to identify: the scope of the action, potential modifications to the proposal, potential alternatives, environmental constraints, potential timeframes for the environmental review, and federal, state, or tribal entities that could be interested in the project, including those with the potential to become cooperating agencies. Through the NOI, the Commission shall invite comments and suggestions on the scope of the EIS.

(b) Publication of the NOI in the **Federal Register** shall begin the public scoping process. The public scoping process for a Commission EIS shall allow a minimum of 30 days for the receipt of public comments.

§ 900.402 Preparation and filing of draft and final EISs.

(a) *General.* Except for proposals for legislation as provided for in 40 CFR 1506.8, EISs shall be prepared in two stages and may be supplemented.

(b) *Format.* The EIS format recommended by 40 CFR 1502.10 shall be used unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10, as further described in 40 CFR 1502.11 through 1502.18.

(c) *Applicant role.* The draft or final EIS shall be prepared by the Commission with assistance from the applicant under appropriate guidance and direction from the Approving Official.

(d) *Third-party consultants.* A third-party consultant selected by the Commission or in cooperation with a cooperating agency may prepare the draft or final EIS.

(e) *Commission responsibility.* The Commission shall provide a schedule with time limits, guidance, participate in the preparation, independently evaluate, and take responsibility for the content of the draft and final EIS.

(f) *Filing.* After a draft or final EIS has been prepared, the Commission shall file the EIS with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability in accordance with 40 CFR 1506.9 and 1506.10.

(g) *Draft to final EIS.* When a final EIS does not require substantial changes from the draft EIS, the Commission may document required changes in errata sheets, insertion pages, and revised sections. The Commission will then circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as its final EIS. The Commission will not circulate the draft EIS again; however, the Commission will post the EIS on its Web site and provide the draft EIS if requested.

(h) *Record of decision.* A record of decision (ROD) will be prepared in accordance with 40 CFR 1505.2.

§ 900.403 Supplemental EIS.

(a) Supplements to either draft or final EISs shall be prepared, as prescribed in 40 CFR 1502.9, when the Commission finds that there are substantial changes are proposed in a project that are relevant to environmental concerns; or when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) Where Commission action remains to be taken and the EIS is more than three years old, the Commission will review the EIS to determine whether it is adequate or requires supplementation.

(c) The Commission shall prepare, circulate and file a supplement to an EIS in the same fashion (exclusive of scoping) as a draft and final EIS. In addition, the supplement and accompanying administrative record shall be included in the administrative record for the proposal. When an applicant is involved, the applicant shall, under the direction of the approving official, provide assistance.

(d) An NOI to prepare a supplement to a final EIS will be published in those cases where a ROD has already been issued.

§ 900.404 Adoption.

(a) The Commission may adopt a draft or final EIS or portion thereof (see 40 CFR 1506.3), including a programmatic EIS, prepared by another agency.

(b) If the actions covered by the original EIS and the proposal are substantially the same, the Commission shall recirculate it as a final statement. Otherwise, the Commission shall treat the statement as a draft and recirculate it except as provided in paragraph (c) of this section.

(c) Where the Commission is a cooperating agency, it may adopt the EIS of the lead agency without recirculating it when, after an independent review of the EIS, the Commission concludes that its comments and suggestions have been satisfied.

(d) When the Commission adopts an EIS which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under 40 CFR part 1504, or when the EIS's adequacy is the subject of a judicial action which is not final, the Commission shall so specify.

§ 900.405 Proposals normally requiring an EIS.

An EIS will normally be required for:

(a) Large scale infrastructure construction efforts such as the relocation of an entire community;

(b) A project that requires a formal consultation under Section 7 of the Endangered Species Act; or

(c) Where implementation of the proposal may directly cause or induce changes that significantly:

(1) Displace population;

(2) Alter the character of existing residential areas; or

(3) Adversely affect a floodplain.

Appendix A to Part 900—Categorical Exclusions

A. General Categorical Exclusions

Actions consistent with any of the following categories are, in the absence of extraordinary circumstances, categorically excluded from further analysis in an EA or EIS:

A1. Routine administrative and management activities including, but not limited to, those activities related to budgeting, finance, personnel actions, procurement activities, compliance with applicable executive orders and procedures for sustainable or "greened" procurement, retaining legal counsel, public affairs activities (*e.g.,* issuing press releases, newsletters and notices of funding availability), internal and external program evaluation and monitoring (*e.g.,* site visits), database development and maintenance, and computer systems administration.

A2. Routine activities that the Commission does to support its program partners and stakeholders, such as serving on task forces, ad hoc committees or representing Commission interests in other forums.

A3. Approving and issuing grants for administrative overhead support.

A4. Approving and issuing grants for social services, education and training programs, including but not limited to support for Head Start, senior citizen programs, drug treatment programs, and funding internships, except for projects involving construction, renovation, or changes in land use.

A5. Approving and issuing grants for facility planning and design.

A6. Nondestructive data collection, inventory, study, research, and monitoring activities (*e.g.,* field, aerial and satellite surveying and mapping).

A7. Research, planning grants and technical assistance projects that are not reasonably expected to commit the federal government to a course of action, to result in legislative proposals, or to result in direct development.

A8. Acquisition and installation of equipment including, but not limited to, EMS, emergency and non-expendable medical equipment (*e.g.,* digital imaging devices and dental equipment), and communications equipment (*e.g.,* computer upgrades).

B. Program Categorical Exclusions

Actions consistent with any of the following categories are, in the absence of extraordinary circumstances, categorically excluded from further analysis and documentation in an EA or EIS upon completion of the Denali Commission CATEX checklist:

B1. Upgrade, repair, maintenance, replacement, or minor renovations and additions to buildings, roads, harbors and other maritime facilities, grounds, equipment, and other facilities, including but not limited to, roof replacement, foundation repair, ADA access ramp and door improvements, weatherization and energy efficiency related improvements, HVAC renovations, painting, floor system replacement, repaving parking lots and ground maintenance, that do not result in a change in the functional use of the real property.

B2. Engineering studies and investigations that do not permanently change the environment.

B3. Construction or lease of new infrastructure including, but not limited to, health care facilities, community buildings, housing, and bulk fuel storage and power generation plants, where such lease or construction:

(a) Is at the site of existing infrastructure and capacity is not substantially increased; or

(b) Is for infrastructure of less than 12,000 square feet of useable space when less than two aces of surface land area are involved at a new site.

B4. Construction or modification of electric power stations or interconnection facilities (including, but not limited to, switching stations and support facilities).

B5. Construction of electric powerlines approximately ten miles in length or less, or approximately 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-way.

B6. Upgrading or rebuilding approximately twenty miles in length or less of existing electric powerlines, which may involve minor relocations of small segments or the powerlines.

B7. Demolition, disposal, or improvements involving buildings or structures when done in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), and other hazardous materials.

PARTS 901–999 [RESERVED]

Dated: July 6, 2016.

Joel Neimeyer,

Federal Co-Chair.

[FR Doc. 2016–18176 Filed 8–10–16; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[PS Docket No. 15–94; FCC 16–80]

Amendment of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) revises its rules governing the Emergency Alert System (EAS) to add three new EAS event codes, covering extreme wind and storm surges, as well as revise the territorial boundaries of the geographic location codes for two offshore marine areas.

DATES: Effective September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, at (202) 418–7452, or by email at *Lisa.Fowlkes@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order (*Order*) in PS Docket No. 15–94, FCC 16–80, adopted on July 6, 2016, and released on July 11, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

Synopsis of the Order

1. The *Order* revises the Part 11 EAS rules to add three new EAS event codes, covering extreme wind and storm surges, as well as revise the territorial boundaries of the geographic location codes for two offshore marine areas. The Commission initiated this proceeding in response to a request from the National Weather Service (NWS) of the National Oceanic and Atmospheric Administration (NOAA) that the Commission adopt these revisions to harmonize the EAS with the NWS's weather radio system. Virtually all commenters addressing these revisions supported their adoption.

I. Background

2. The EAS is a national public warning system through which broadcasters, cable systems, and other EAS Participants deliver alerts to the public to warn them of impending emergencies and dangers to life and property. The primary purpose of the EAS is to provide the President with "the capability to provide immediate communications and information to the general public at the national, state and local levels during periods of national emergency." The EAS also is used by state and local governments, as well as the NWS, to distribute alerts. According to NWS, about 90 percent of all EAS activations are generated by NWS and relate to short-term weather events. The Commission, the Federal Emergency Management Agency (FEMA), and NWS implement the EAS at the federal level. The EAS is a broadcast-based, hierarchical alert message distribution system through which an alert message originator at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol, which provides basic information about the emergency involved. The message is then broadcast by one or more EAS Participants and subsequently relayed from one station to another until all affected EAS Participants have received the alert and delivered it to the public. This process of EAS alert distribution among EAS Participants is often referred to as the "daisy chain" distribution architecture.

3. The EAS Protocol utilizes fixed codes to identify various aspects of the alert. Of particular relevance to the *Order,* the EAS Protocol utilizes a three-character "event code" to describe the nature of the alert (*e.g.,* "TOR" signifies tornado). The EAS Protocol identifies "National" event codes, such as the EAN and National Periodic Test (NPT), which EAS Participants use as part of required Presidential alerts and tests,

and which EAS Participants are required to disseminate, and "State and Local" event codes, such as Amber alerts and weather-related alerts issued by the NWS, which EAS Participants disseminate on a voluntary basis. In addition, the EAS Protocol utilizes six-digit numerical location codes to identify the geographic area(s) to which the alert applies. Unlike the state and territory geographic location codes, which are based on an American National Standards Institute (ANSI) standard, the codes assigned to the offshore marine areas were created by the NWS and adopted by the Commission in 2002 at NWS's request, following notice and opportunity for public comment.

II. Discussion

A. Proposed EAS Event Codes

4. NWS requested that the Commission add a new "Extreme Wind Warning" (EWW) event code to provide the public with advance notice of the onset of extreme sustained surface winds (greater than or equal to 115 miles per hour) associated with a major land-falling hurricane (Category 3 or higher). NWS also requested that the Commission add two new event codes covering storm surges: "Storm Surge Watch" (SSA) and "Storm Surge Warning" (SSW). NWS indicated that the "Storm Surge Watch/Warning will be issued when there is a significant risk of life-threatening inundation from rising water moving inland from the ocean."

5. *Decision.* We grant NWS's request and revise Section 11.31 of the EAS rules to add the EWW, SSA and SSW event codes to the EAS Protocol. As we observed in the Notice of Proposed Rulemaking (*NWS NPRM*) in PS Docket No. 15–94, 80 FR 47886 (Aug. 10, 2015), there is considerable data attesting to the dangers posed to life and property by both high winds and, in particular, storm surges, associated with hurricanes. While the EAS Protocol currently contains event codes covering hurricanes, these codes only generally warn of an impending hurricane—they do not specifically cover extreme high winds associated with a Category 3 or higher hurricane or storm surges associated with a hurricane. The record demonstrates that existing event codes contained in the EAS Protocol are not adequate substitutes for the adoption of the EWW, SSA and SSW event codes. As NWS has observed, for example, use of the TOR event code during prior hurricanes led to confusion among the public and the dissemination of incorrect risk-avoidance advice. Monroe County Florida Emergency Management observes that "[c]oastal residents may know or have an anticipated expectation regarding the impact of flood warnings which may be due in part to wind, tide, or heavy rain[, and] that anticipation can be confused unless the wording used is completely different as proposed." We do not find that the public interest would be served by relying on inadequate warnings that might provide incorrect or even opposite remedial advice to the public. Based on the record before us and the subject matter expertise of the NWS, we conclude that adoption of the event codes proposed by the NWS will improve the function of the EAS, enhance safety of life and property, and therefore is in the public interest.

6. We do not find EAS equipment manufacturer, TFT, Inc.'s (TFT), arguments against adoption of the new event codes persuasive. The dangers posed by hurricane-induced extreme high winds and storm surges are well established, and the record in this proceeding establishes a need and desire for adoption of these codes to better address such dangers. The National Association of Broadcasters, for example, states that "[e]xplicit codes for storm surges and warnings would better reflect their rapid development and movement than the existing codes for a flood watch or warning, or other water-related situations." Radio Hatteras states that "[t]he addition of EWW, SSA and SSW codes would significantly enhance public safety in coastal regions" TFT's objection that the public will not appreciate the nuances between the specific dangers posed by extreme winds and storm surges caused by a hurricane and the dangers posed generally by the hurricane itself has no support in the record. Monroe County Florida Emergency Management, for example, contends that "[s]tudies show, the public is more likely to follow protective action recommendation, such as evacuations or shelter in place, or limit travel, if the directives are clearly and concisely communicated to them." Moreover, the NWS indicates that having the new codes become effective in the summer of 2016 will provide the NWS sufficient time to conduct outreach and education on the meaning of these new codes before the NWS begins to issue alerts using these codes for the 2017 hurricane season. The outreach and education that NWS intends to conduct will include a public education campaign, including "public service announcements over NWR; NWS News Releases; official NWS Service Change Notifications; advertising on NWS Web sites; updates to official preparedness brochures and pamphlets; briefings to emergency managers; presentations at federal, state and local hurricane conferences; concurrent outreach and partnering efforts with FEMA; and extensive community outreach efforts by the NWS Warning Coordination Meteorologist in every Weather Forecast Office impacted by tropical cyclones."

B. Proposed Geographic Location Code Revisions

7. NWS also requested that the Commission revise the areas defined in the geographic location codes identified in Section 11.31(f) of the EAS rules as location codes 75 and 77, which cover offshore marine areas. Specifically, NWS indicated that it has changed the end point it uses for generating weather alerts for both of these areas from Bonita Beach, Florida, to Ocean Reef, Florida, and, accordingly, requested that the area covered by location code 75 be changed to "Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, NC, following the coastline to Ocean Reef, FL, including the Caribbean," and that the area covered by location code 77 be changed to "Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Ocean Reef, FL." NWS stated that harmonizing the definitions for these areas in the EAS rules to match those used by the NWS would alleviate potential confusion among broadcasters, the emergency management community and the maritime commerce community that issue and monitor alerts for these areas. NWS again noted that it had checked with several EAS encoder/decoder manufacturers, and was informed that the cost and time to make the requested change would be nominal.

8. *Decision.* We grant NWS's request and change the defined areas identified in Section 11.31(f) of the EAS rules for location codes 75 and 77 to "Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, NC, following the coastline to Ocean Reef, FL, including the Caribbean," and "Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Ocean Reef, FL," respectively. These definitional changes amount to minor modifications to location definitions created and used by the NWS. Further, harmonizing the Part 11 definitions for these locations with those used by the NWS is necessary to ensure that the SMW and other marine-specific alerts reach their intended audiences. Such action also should eliminate any potential for confusion that might otherwise exist among EAS

Participants, the emergency management community and the maritime commerce community in the event that the EAS rules and NWS used different location definitions. We also observe that EAS equipment manufacturers have confirmed that these changes can be implemented by EAS Participants via software downloads with minimal effort.

9. We do not find TFT's arguments against adoption of the new location codes persuasive. Whether these codes are widely used or not, we do not see what public interest would be served by allowing continued disharmony between the EAS definitions and those used by the NWS, particularly as these could lead to marine alerts not reaching their intended audiences as well as confusion among the maritime users operating in these geographic areas, potentially placing the safety of vessels and their crews at risk. Further, EAS Participants may install and utilize the revised codes as they deem fit, and we find that the EAS Participants that actually use these codes are best situated to determine whether use of the revised location codes is necessary and meaningful to the areas they serve.

10. Finally, we also revise footnote 1 of Section 11.31 to delete the reference to the past deadline and to clarify that the numbers assigned to the offshore marine areas listed in the table of geographic areas in Section 11.31(f), while consistent with the ANSI standard, are not a product of that standard, but rather were assigned by the NWS. No party commented on that proposed change, which in any event, is largely administrative in nature. We conclude that harmonizing the definitions in the EAS with those used by the NWS will eliminate the potential for needless confusion among EAS Participants, the emergency management community and the maritime commerce community as to the geographic application of these codes, and maintain the efficiency of marine operations and safety of vessels and their crews.

C. Cost Benefit Analysis

11. The Commission observes that EAS equipment manufacturers have indicated in the record that the new codes and code revisions can be implemented by EAS Participants via minimally burdensome and low-cost software downloads. Further, use of these codes is not mandatory for EAS Participants; EAS Participants are free to implement them if and when they see fit, thus reducing the overall costs to EAS Participants even further.

12. We observe that although EAS equipment manufacturers must make the new event and locations codes available to all EAS Participants, these manufacturers have indicated in the record that the codes can be implemented by EAS Participants via minimally burdensome and low cost software downloads. Further, use of these codes is not mandatory for EAS Participants; EAS Participants are free to implement them if and when they see fit, thus reducing the overall costs to EAS Participants even further. While some currently deployed legacy EAS device models may not be capable of being updated to accommodate these codes, we observe that any such equipment already is required to be replaced to accommodate the recently adopted NPT event code and ''000000'' geographic code for national testing no later than July 30, 2016, thus, no EAS Participant will be faced with the cost of obtaining new EAS equipment simply to use the new event codes and geographic locations code revisions adopted in this item.

13. Based on the record, we anticipate that the only cost to EAS Participants who elect to install these new event codes and geographic location code revisions will be whatever labor cost is involved in downloading the software patches into their devices and associated clerical work. We further anticipate that such installation would not on average take more than one hour. However, even using a worst case cost figure of $125.00 per device—which figure represents the labor cost estimate approved by the Office of Management and Budget for an EAS Participant to fill out the Commission's online reporting form for EAS National Tests at a total time expenditure of *five* hours—the cost of implementing these codes are far exceeded by the benefits they provide. At a per-unit cost of $125.00, even if all EAS Participants elected to implement these codes (an unlikely event in areas not prone to hurricanes), the aggregate cost of adopting these new codes would be approximately $3.5 million.

14. With respect to benefits, we have proposed that the benchmark for measuring these types of expected benefits should be the value of a statistical life (VSL), currently estimated at $9.1 million. Accordingly, the value of this risk reduction to the public, measured in terms of expected lives saved, is at least $9.1 million, which far exceeds the one-time, highly conservative $3.5 million aggregated cost estimate if each and every EAS Participant across the U.S. elected to implement these new codes and code revisions. Furthermore, this expected benefit is a conservative valuation because the EAS is likely to save more than just one life in the event of a storm surge or extreme high winds caused by a Category 3 or higher hurricane, will accrue annually, and does not include the benefits associated with reducing injuries and associated medical costs, mitigating property damage, and minimizing the disruption of our national economy. Accordingly, we conclude that the minor burdens associated with adopting these codes will be more than offset by the benefits to public safety that will accrue from the introduction of these new codes into the EAS alerting framework.

D. Implementation Schedule

15. *Decision.* We believe that the prompt deployment of alerts using these new codes is consistent with the safety of the public in affected areas. Accordingly, we require EAS equipment manufacturers to integrate these codes into equipment yet to be manufactured or sold, and make necessary software upgrades available to EAS Participants no later than six months from the effective date of the rule amendments adopted in this *Order.* We observe that EAS equipment manufacturers already have confirmed that these code changes can be implemented fairly easily in the field, and no manufacturer has indicated that implementing such changes on the production line would present any difficulties or require any more time than six months. We also allow EAS Participants to upgrade their existing EAS equipment to include the new event and location code revisions on a voluntary basis until their equipment is replaced. We observe that this approach is the same approach taken by the Commission the only other time that it adopted new event and location codes, and the record does not indicate that any problems arose as a result of that approach.

16. We will not mandate installation of these codes. First, the event codes and location code revisions adopted in this item are germane to only a relatively small subset of EAS Participants located in areas affected by hurricane high winds and storm surges. We believe EAS Participants in these areas already are highly motivated to install and use these codes, as demonstrated by NWS's surveys. Second, as indicated, this approach is consistent with the approach taken by the Commission the only other time it adopted event and location codes, and that time the Commission adopted codes that were germane to all EAS Participants. Third, the use by EAS Participants of these codes, like all State

and local event codes, is and has always been voluntary, and no commenter has presented any arguments as to why that should not continue to be the case.

17. Although we are not mandating that EAS Participants upgrade their existing EAS equipment to incorporate the new event codes and location code revisions, we will require EAS Participants who replace their EAS equipment after one year from the effective date of this *Order* to install EAS equipment that is capable of receiving and transmitting the new event codes and revised location codes. Thus, after this deadline, EAS Participants may not replace their existing EAS equipment with used equipment or older models of equipment that has not been upgraded to incorporate the new codes. This will ensure that all EAS Participants have the capability to receive and transmit the new codes when their EAS equipment is replaced. We observe that this approach is consistent with that taken by the Commission in the Report and Order in EB Docket No. 01–66, 67 FR 18502 (April 16, 2002), and allows for a transition of deployed equipment that mirrors ordinary equipment replacement cycles for those EAS Participants that do not have an immediate need to install the new codes.

18. With respect to transitioning to the new codes, NWS has indicated that it will not initiate alerts using any of the proposed codes until the 2017 Atlantic Hurricane season. The NWS states that focusing on the 2017 Atlantic Hurricane season will allow the NWS to deploy the codes in a uniform manner, and will allow for an extensive public outreach program. The 2017 Atlantic Hurricane season falls well outside of the six month deadline we adopt today for equipment yet to be manufactured or sold and the one year deadline we require for EAS Participants who replace their EAS equipment. Thus, EAS Participants will have sufficient time to install the codes or purchase compliant equipment in time for the NWS actual adoption of the codes. Because the NWS implementation dates for the proposed codes fall outside of our deadlines, and because the NWS will only deploy the codes after an extensive education and outreach program, we believe that the NWS will be able to deliver the appropriate alerts to all recipients without the need for any transition period where it issues alerts using both codes. We also believe that the deadlines we adopt today are consistent with the NWS schedule, as any extra time between our deadline and the NWS's actual use of the codes in an alert will allow EAS equipment manufacturers and EAS Participants time to resolve any technical issues that may arise.

III. Procedural Matters

A. Accessible Formats

19. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

B. Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document.

C. Paperwork Reduction Act Analysis

21. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

D. Congressional Review Act

22. The Commission will send a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act (''CRA''), see 5 U.S.C. 801(a)(1)(A).

E. Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *NWS NPRM.* The Commission sought comments on the IRFA. Because the *Order* amends the Commission's rules, this Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Order

24. This *Order* adopts changes to the Commission's Part 11 rules governing the Emergency Alert System (EAS). Specifically, the *Order* adds three new EAS Event Codes, covering extreme wind (''Extreme Wind Warning'') and storm surges (''Storm Surge Watch'' and ''Storm Surge Warning''), and revises the territorial boundaries of geographic location codes 75 and 77 used by the EAS. These rule revisions improve the capacity of the EAS to warn the public of impending threats to life and property, and ensure that the geographic definitions of location codes 75 and 77 utilized by the EAS are harmonized with those employed by the National Weather Service (NWS).

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

25. The Small Business Administration (SBA) filed no comments in this proceeding, and there were no other comments specifically addressed to the IRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

26. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The following are categories of small entities that may be affected by the rules adopted in the *Order:* Small Businesses, Small Organizations, and Small Governmental Jurisdictions; Television Broadcasting (including commercial television stations; licensed noncommercial educational stations; licensed Class A stations; licensed low power television stations; and licensed TV translators); Radio Stations (including low power FM stations); Wired Telecommunications Carriers; Incumbent Local Exchange Carriers (Incumbent LECs); Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers; Satellite Telecommunications; Direct Broadcast Satellite (''DBS'') Service; and ''All Other Telecommunications'' (comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation).

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. None.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its conclusions, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

29. The rule changes adopted in this *Order* implement certain EAS warning codes and location code definitional changes that are unique, and implemented by small entity and larger-sized regulated entities on a voluntary basis. Thus, the *Order* does not mandate burdens on regulated entities of any size. Moreover, the record in this proceeding indicates that the costs associated with voluntarily implementing the codes contained in the *Order* should be *de minimis* or non-existent.

30. *Report to Congress:* The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

31. Accordingly, IT IS ORDERED that pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this *Order* IS ADOPTED.

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

■ 2. Section 11.31 is amended by revising paragraphs (e) and (f) to read as follows:

§ 11.31 EAS protocol.

* * * * *

(e) The following Event (EEE) codes are presently authorized:

Nature of activation	Event codes
National Codes (Required):	
Emergency Action Notification (National only)	EAN.
National Information Center	NIC
National Periodic Test	NPT.
Required Monthly Test	RMT.
Required Weekly Test	RWT.
State and Local Codes (Optional):	
Administrative Message	ADR.
Avalanche Warning	AVW.
Avalanche Watch	AVA.
Blizzard Warning	BZW.
Child Abduction Emergency	CAE.
Civil Danger Warning	CDW.
Civil Emergency Message	CEM.
Coastal Flood Warning	CFW.
Coastal Flood Watch	CFA.
Dust Storm Warning	DSW.
Earthquake Warning	EQW.
Evacuation Immediate	EVI.
Extreme Wind Warning	EWW.
Fire Warning	FRW.
Flash Flood Warning	FFW.
Flash Flood Watch	FFA.
Flash Flood Statement	FFS.
Flood Warning	FLW.
Flood Watch	FLA.
Flood Statement	FLS.
Hazardous Materials Warning	HMW.
High Wind Warning	HWW.
High Wind Watch	HWA.
Hurricane Warning	HUW.
Hurricane Watch	HUA.
Hurricane Statement	HLS.
Law Enforcement Warning	LEW.
Local Area Emergency	LAE.
Network Message Notification	NMN.
911 Telephone Outage Emergency	TOE.
Nuclear Power Plant Warning	NUW.
Practice/Demo Warning	DMO.
Radiological Hazard Warning	RHW.
Severe Thunderstorm Warning	SVR.
Severe Thunderstorm Watch	SVA.

Nature of activation	Event codes
Severe Weather Statement	SVS.
Shelter in Place Warning	SPW
Special Marine Warning	SMW.
Special Weather Statement	SPS.
Storm Surge Watch	SSA.
Storm Surge Warning	SSW.
Tornado Warning	TOR.
Tornado Watch	TOA.
Tropical Storm Warning	TRW.
Tropical Storm Watch	TRA.
Tsunami Warning	TSW.
Tsunami Watch	TSA.
Volcano Warning	VOW.
Winter Storm Warning	WSW.
Winter Storm Watch	WSA.

(f) The All U.S. State, Territory and Offshore (Marine Area) ANSI number codes (SS) are as follows. County ANSI numbers (CCC) are contained in the State EAS Mapbook.

(f) The All U.S., State, Territory and Offshore (Marine Area) ANSI number codes (SS) are as follows. County ANSI numbers (CCC) are contained in the State EAS Mapbook.

	ANSI No.
All U.S	00
State:	
AL	01
AK	02
AZ	04
AR	05
CA	06
CO	08
CT	09
DE	10
DC	11
FL	12
GA	13
HI	15
ID	16
IL	17
IN	18
IA	19
KS	20
KY	21
LA	22
ME	23
MD	24
MA	25
MI	26
MN	27
MS	28
MO	29
MT	30
NE	31
NV	32
NH	33
NJ	34
NM	35
NY	36
NC	37
ND	38
OH	39
OK	40
OR	41
PA	42
RI	44
SC	45
SD	46
TN	47
TX	48
UT	49
VT	50
VA	51

	ANSI No.
WA	53
WV	54
WI	55
WY	56
Terr.:	
AS	60
FM	64
GU	66
MH	68
PR	72
PW	70
UM	74
VI	78
Offshore (Marine Areas)[1]	
Eastern North Pacific Ocean, and along U.S. West Coast from Canadian border to Mexican border	57
North Pacific Ocean near Alaska, and along Alaska coastline, including the Bering Sea and the Gulf of Alaska	58
Central Pacific Ocean, including Hawaiian waters	59
South Central Pacific Ocean, including American Samoa waters	61
Western Pacific Ocean, including Mariana Island waters	65
Western North Atlantic Ocean, and along U.S. East Coast, from Canadian border south to Currituck Beach Light, N.C	73
Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, NC, following the coastline to Ocean Reef, FL, including the Caribbean	75
Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Ocean Reef, FL	77
Lake Superior	91
Lake Michigan	92
Lake Huron	93
Lake St. Clair	94
Lake Erie	96
Lake Ontario	97
St. Lawrence River above St. Regis	98

[1] The numbers assigned to the offshore marine areas listed in this table are not described under the ANSI standard, but rather are numeric codes that were assigned by the National Weather Service.

[FR Doc. 2016–18962 Filed 8–10–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 213 and 218

[Docket DARS–2016–0023]

Defense Federal Acquisition Regulation Supplement; Technical Amendment

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective August 11, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS 213.201(g) to add a reference to guidance available in DFARS Procedures, Guidance, and Information on the use of the higher micro-purchase thresholds prescribed in FAR 13.201(g) to support a declared contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. A reference to DFARS 213.201 is also added at DFARS 218.201.

List of Subjects in 48 CFR Parts 213 and 218

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 213 and 218 are amended as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 213 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add section 213.201 to read as follows:

213.201 General.

(g) See PGI 213.201(g) for guidance on use of the higher micro-purchase thresholds prescribed in FAR 13.201(g) to support a declared contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

PART 218—EMERGENCY ACQUISITIONS

■ 3. The authority citation for 48 CFR part 218 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

218.201 [Amended]

■ 4. Amend section 218.201 by, in paragraph (3), removing "See 213.270(c)(3)" and adding "See 213.201(g) and 213.270(c)(3)" in its place.

[FR Doc. 2016–18705 Filed 8–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 670

[Docket No. FTA–2015–0009]

RIN 2132–AB22

Public Transportation Safety Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is issuing a final rule to establish substantive and procedural rules for FTA's administration of a comprehensive safety program to improve the safety of the Nation's public transportation systems. This final rule provides the framework for FTA to monitor, oversee and enforce transit safety, based on the methods and principles of Safety Management Systems.

DATES: The effective date of this rule is September 12, 2016.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Brian Alberts, Office of Transit Safety and Oversight, (202) 366–1783 or *brian.alberts@dot.gov.* For legal matters, contact Candace Key, Office of Chief Counsel, (202) 366–1936 or *candace.key@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of Regulatory Action

This final rule establishes substantive and procedural rules to support the Federal Transit Administrator in carrying out the Public Transportation Safety Program (Safety Program), first authorized in the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141 (2012)), and codified at 49 U.S.C. 5329. On December 4, 2015, the President signed into law the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94 (2015)). The FAST Act made two amendments to the Safety Program that affect today's rulemaking and are discussed further, below.

B. Statutory Authority

Under 49 U.S.C. 5329 (Section 5329), FTA, through the authority delegated by the Secretary of the Department of Transportation, must create a comprehensive Public Transportation Safety Program. Most notably, Section 5329 provides FTA with the following explicit authorities to administer the Safety Program and to take enforcement actions:

- 49 U.S.C. 5329(f), provides FTA with the authority to inspect and audit a public transportation system; make reports and issue directives with respect to the safety of a public transportation system or the public transportation industry generally; issue subpoenas and take depositions; require the production of documents; prescribe recordkeeping and reporting requirements; investigate public transportation accidents and incidents; enter into and inspect the equipment, rolling stock, operations and relevant records of a public transportation system; and issue regulations.
- 49 U.S.C. 5329(g) authorizes FTA to take enforcement actions against a recipient of Federal financial assistance under 49 U.S.C. chapter 53 that is noncompliant with Federal transit safety law, through issuing directives, requiring more frequent oversight, imposing more frequent reporting requirements, requiring that chapter 53 funds be spent to correct safety deficiencies before those funds are spent on other projects, and withholding funds from a recipient.
- 49 U.S.C. 5329(h) authorizes FTA to impose restrictions and prohibitions on a recipient's operations, where FTA determines that an unsafe practice or condition creates a substantial risk of death or personal injury.

C. Summary of Major Provisions

In the Notice of Proposed Rulemaking (NPRM), 80 FR 48794, (August 14, 2015), FTA proposed (1) to add a new part 670, "Public Transportation Safety Program," to title 49 of the Code of Federal Regulations (CFR); (2) to formally adopt a Safety Management Systems (SMS) approach as the foundation of the Safety Program; (3) to establish substantive and procedural rules for FTA's administration of the Safety Program; and (4) to describe the contents of a National Public Transportation Safety Plan (National Safety Plan or Plan).

This final rule will add a new part 670, "Public Transportation Safety Program," to title 49 of the CFR. In response to public comments, FTA has made a number of nonsubstantive, clarifying edits. In addition, FTA has made the following substantive changes:

1. Amended section 670.23(b) to state that FTA may withhold not more than 25 percent of a recipient's Urbanized Area Formula funds.
2. Amended section 670.27 to provide that the Deputy Administrator may issue special directives, with petitions for reconsideration going to the Administrator.
3. Amended section 670.29 to remove language stating that FTA would consider whether a recipient has complied with an advisory when taking enforcement actions.

D. Costs and Benefits

This final rule establishes substantive and procedural rules for FTA's authority to inspect, investigate, audit, examine and test transit agencies' facilities, equipment, and records; direct or withhold Federal transit funds; and issue directives and advisories. The final rule does not impose additional costs on entities other than FTA. The costs to recipients associated with FTA's enforcement authorities are captured in the rulemakings for Public Transportation Agency Safety Plans, State Safety Oversight, and the Public Transportation Safety Certification Training Program. FTA received a number of comments on the cost assumptions in the NPRM, which are summarized in section III, below.

II. Rulemaking Background

On October 3, 2013, FTA introduced the transit industry to fundamental changes to the Federal transit safety program authorized by MAP–21 with a consolidated advance notice of proposed rulemaking (ANPRM). 78 FR 61251. FTA issued the ANPRM to provide the public with a better understanding of FTA's proposed approach to implementing the requirements for transit asset management and safety, and to obtain stakeholder input. Throughout the ANPRM, FTA expressed its intention to adopt a comprehensive approach to transit asset management and safety that would be scalable and flexible. In addition, the ANPRM highlighted the inherent linkages between asset condition (state of good repair) and safety performance through the explanation of FTA's anticipated proposal to adopt the principles and methods of SMS as the foundation for the development, implementation, oversight and enforcement of the Safety Program.

In the August 2015 NPRM, FTA proposed a series of specific substantive and procedural rules for FTA's administration of the Safety Program. FTA took the public comments on both the ANPRM and NPRM into consideration in developing today's final rule.

III. Summary of NPRM Comments and FTA's Responses

FTA received comments from 118 entities, including transit agencies, trade associations, state and local governments, and private citizens. Some comments were outside the scope of this rulemaking, and some pertained to other safety rulemakings. For example, many commenters expressed support for MAP–21's safety objectives, but indicated that FTA appeared to be using language to implement SMS principles that would be more appropriate for the rail transit industry or that do not translate easily to the bus industry. To the extent these comments concerned the applicability of FTA's authority to specific types of transit agencies, please see the below discussion on "Purpose and Applicability." To the extent these comments concerned the scalability of SMS, we believe they are more appropriately handled in the final rule concerning the Public Transportation Agency Safety Plans, which FTA plans to issue in the coming months. In general, this document does not respond to those comments that were not related to the substance of today's rulemaking; however, to assist with understanding the intent of today's rule, FTA does address some comments that are related to other safety rulemakings. Following are summaries of the comments received and FTA's responses.

A. General Comments

Comments: Costs and Benefits

A number of commenters stated that the rule would have moderate to significant direct cost implications and economic impacts, due to its detailed implementation requirements, including nationwide SMS implementation. Some commenters were concerned that the proposed rule would impose costs and administrative burdens on States and transit agencies. Some commenters suggested that the NPRM would be an "unfunded mandate" because FTA did not identify any specially designated funding that could be used by recipients towards complying with the rule. Some commenters stated that FTA had not properly accounted for the costs to recipients, including State Safety Oversight Agencies (SSOAs), to implement the other rulemakings required under 49 U.S.C. 5329. Some commenters indicated that it is difficult to evaluate and quantify the costs of implementing each component of the Safety Program rule until FTA issues all of the final rules on safety.

Several commenters requested that FTA cite the research study that provided the data and analysis supporting its assumption that the rule would not have a financial impact on the economy, States, and transit agencies. Some commenters noted that recipients would incur additional costs such as requiring more staff to implement SMS and comply with FTA's safety rulemakings. Other commenters suggested that recipients would incur costs when responding to FTA enforcement actions.

FTA Response: Costs and Benefits

FTA has considered the comments and continues to find that this rule does not impose specific costs to recipients. Rather, this final rule establishes substantive and procedural rules to support FTA's own administration of the Safety Program. The final rule does not require recipients to take any specific action. Specific requirements for recipients, such as implementing SMS, have been outlined by FTA in the proposed and final rulemakings (as applicable) for Public Transportation Agency Safety Plans, the State Safety Oversight Program, and the Public Transportation Safety Certification Training Program. The cost projections, underlying assumptions, and research for each requirement are included in the cost benefit analysis section for each of those rulemakings.

Comments: Funding

A few commenters stated that adequate funding should be set aside, authorized, and appropriated by Congress prior to implementation of this rulemaking. Further, a few commenters indicated that funding to implement the Safety Program (including reporting requirements) should not come from existing operating and capital improvement grant funds, but rather from new and additional grant funds set aside by FTA. One commenter suggested that FTA create a special category of funding that local agencies could use to pay for the costs to mitigate risks associated with safety inspection findings. One commenter suggested that FTA designate special funding for hazard mitigation.

Some commenters noted that FTA should be aware of existing and increasing funding shortfalls already faced by many recipients, including forced service cuts, fare increases and layoffs. Commenters noted that the expected cost implications would create significant issues with their prioritization of funding.

Several commenters recommended that FTA work to secure the necessary funding at the Federal, State, and local level and that each State be allowed to distribute the funds. One commenter stated that FTA should examine the process by which other U.S. Department of Transportation agencies secure funding for their safety programs.

FTA Response: Funding

The Safety Program is a requirement of 49 U.S.C. 5329. Congress determines the level of funding for the Federal transit program. FTA recognizes the need for increased investments in transit at all levels of government, and recommends funding levels for the Federal transit programs through the annual congressional appropriations process.

Comments: Tribal Consultation

FTA received one comment related to Tribal consultation. The commenter indicated that the worthy goal of this rulemaking can only properly be realized in Indian Country following meaningful consultation with Tribal governments and technical discussions and collaboration with the Tribal Transportation Program Coordinating Committee. The commenter noted that most Tribal transit systems operate on a very small scale, and with severe financial and administrative limitations. The commenter stated that for these practical reasons, FTA has an obligation as a prudent policy maker to engage in a meaningful consultation with Tribal nations prior to developing regulations that will apply to Tribally-operated transit systems. The commenter stated that the represented Tribes do not agree with FTA's view that Tribal consultation requirements do not apply to this rule. The commenter recommended that FTA either clarify the scope of the rule so that it does not apply to Tribes or engage in formal Tribal consultation before issuing a final rule.

FTA Response: Tribal Consultation

FTA appreciates the comments from Tribal representatives. However, FTA disagrees that this rule will have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes." Executive Order 13175, November 6, 2000. This rule establishes substantive and procedural rules for FTA's administration of the Safety Program. As noted above, this regulation outlines FTA's authorities to conduct reviews, audits, investigations, examinations, inspections and testing, and to issue findings and directives which would require corrective actions by recipients. The rule does not impose specific requirements on Tribes or any other recipients. Therefore, FTA finds that the final rule does not impose substantial direct effects on one or more Indian Tribes and does not impose substantial direct compliance costs on Tribal governments.

Although not required to under Executive Order 13175, FTA has engaged in active consultation with Tribes in the development of this final rule. In advance of publishing an NPRM, FTA sought comment from the transit industry on a wide range of topics pertaining to the new Public Transportation Safety Program provisions authorized by MAP–21 through an ANPRM. FTA asked specific questions about how FTA should apply the new safety requirements to recipients of the section 5311 Tribal Transit Formula Program and Tribal Transit Discretionary Program. Additionally, FTA continued to engage with the industry following the publication of the NPRM through subsequent outreach efforts, including a webinar for small, rural and Tribal transit providers, which was held on October 27, 2015. FTA also held a listening session at the National Rural Transit Assistance Program Annual Meeting, which historically has been well attended by Tribal representatives.

Comments: Other

One commenter suggested that the proposed rule would create federalism issues and asked FTA to explain why it did not believe that the rule would create federalism issues.

FTA Response: Other

Pursuant to Executive Order 13132, to the extent practicable and permitted by law, a Federal agency cannot promulgate two types of rules unless it meets certain conditions. The two types of rules are:

1. Rules with Federalism Implications, substantial direct compliance costs on state and local governments, and not required by statute, and
2. Rules with Federalism Implications and that preempt state or local law.

Federalism Implications are defined as having substantial direct effects on States or local governments (individually or collectively), on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA does not believe that this rule has substantial direct effects on States or local governments or the distribution of power and responsibilities among the various levels of government. Further, this rule does not preempt State or local law. This rule merely restates FTA's statutory authority to administer the Safety Program and provides processes to support FTA's administration of the Safety Program.

B. Section by Section Comments

Subpart A General Provisions

670.1 Purpose and Applicability

This section proposed that the purpose of the regulations would be to establish a Public Transportation Safety Program, and that the part would apply to all recipients of Federal transit funds.

Comments: Purpose and Applicability

Several commenters requested clarification regarding the applicability of the proposed rule. One commenter asked for clarification regarding the statutory authority that was referenced in the proposed purpose and applicability section.

One commenter stated that the proposed rule could be read to apply to Tribes that are direct recipients and to Tribes that are subrecipients of a State. Some commenters suggested that the rule should not apply to commuter rail operators that are subject to Federal Railroad Administration (FRA) regulations and recommended that FTA amend subpart D to clearly exclude commuter railroads. A few commenters queried whether the proposed rule would apply to bus operations. Two commenters asked if SSOAs would be considered recipients within the scope of this rule. One commenter suggested that FTA clarify whether the proposed rule would apply to third party contractors.

Some commenters indicated that the rule should allow flexibility for a State recipient to determine whether the rules should apply to subrecipients. One commenter asserted that Section 5329 allows FTA to adopt a different approach for the Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program authorized at 49 U.S.C. 5310 (Section 5310) because Section 5329 specifically references the Rural Area Formula Program, 49 U.S.C. 5311, and the Urbanized Area Formula Program, 49 U.S.C. 5307, but makes no reference to Section 5310 grantees. The commenter recommended that FTA add language under section 670.1 to state that the part would not apply to public transportation systems that only receive Section 5310 funds. The commenter also recommended that FTA allow direct recipients under the Section 5310 program to lay out their approach to safety for their subrecipients in the State or Program Management Plan required under the Section 5310 program circular (C 9070 1G).

FTA Response: Purpose and Applicability

With the enactment of MAP–21, Congress directed FTA to develop a Public Transportation Safety Program for all recipients of Federal financial assistance under 49 U.S.C. chapter 53. Section 5329(a) of Title 49 of the United States Code specifically defines recipient as a "State or local governmental authority, or any other operator of a public transportation system." Accordingly, this final rule applies to recipients of Federal financial assistance under 49 U.S.C. chapter 53, regardless of mode, including recipients of funding under 49 U.S.C. 5310 that provide public transportation, States, SSOAs, and Tribes. The rule applies to contractors who function in the capacity of the defined recipients; however, a recipient ultimately is responsible for ensuring its contractors are in compliance with the Safety Program.

FTA recognizes that some recipients, such as commuter rail operators, are subject to the safety regulatory requirements of other Federal agencies. Accordingly, a chapter 53 recipient that operates commuter rail, light rail, and a bus system will continue to have its commuter rail operations governed by the FRA, but its light rail and bus operations will be governed by 49 U.S.C. 5329 and FTA's safety regulations.

FTA has amended this section in the final rule to align with the definition of "recipient" at 49 U.S.C. 5329(a) and to clarify that the rule establishes substantive and procedural rules for FTA's administration of the Safety Program.

670.3 Policy

This section proposed the formal adoption of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States.

Comments: Policy: Safety Management Systems

A number of commenters indicated support for FTA's adoption of SMS principles and methods as the basis for the Safety Program. Other commenters were critical of SMS being FTA's sole approach to implementing the Safety Program. Some commenters stated that FTA's approach is focused on urban rail transit systems. These commenters noted that FTA should provide alternative methods for implementing the Safety Program that are consistent with SMS concepts, but are more applicable to smaller bus systems.

Several commenters suggested that FTA adopt an approach that is simple to understand and easy to implement. One commenter expressed confidence that an SMS approach would result in improved and uniform safety standards across the country, but suggested that without further clarification from FTA, the proposed rule could unduly burden smaller public transportation systems by subjecting them to currently unknown facets of SMS that are only necessary or, in practice, applicable to the largest public transportation systems.

FTA RESPONSE: Policy: Safety Management System

FTA understands those commenters that expressed concern over FTA's proposed adoption of SMS as the basis for the Safety Program. To clarify, the NPRM did not propose, nor does this final rule require a recipient to adopt SMS. On February 5, 2016, FTA issued a proposed rule for Public Transportation Agency Safety Plans that would require each recipient to develop an agency safety plan based on SMS (*See* 81 FR 6344–71). The preamble to that rule describes SMS as a scalable and flexible approach that can apply across the transit industry. The comment period for the Public Transportation Agency Safety Plan closed on April 5, 2016. FTA is reviewing the public comments and anticipates publishing a final rule this calendar year.

FTA disagrees with those commenters who suggest that SMS is not a practical approach for the Nation's diverse transit industry. FTA is taking a risk-based, proactive approach to implementation of the Public Transportation Safety Program. Specifically, the SMS pillars of safety risk management and safety assurance are designed to assist in identifying in advance where potential safety risks reside, and developing and implementing mitigations (rules, directives, guidance, best practices) that would prevent the likelihood and minimize the severity of the risk. FTA is committed to developing, implementing, and consistently improving strategies and processes to ensure that transit achieves the highest practicable level of safety. SMS is FTA's approach to achieving this goal by building a 21st-century safety regime that is flexible, scalable, and responsive to emerging safety issues.

FTA has revised this section in the final rule to clarify that the policy statement specifically applies to actions undertaken by FTA.

670.5 Definitions

This section included proposed definitions for terms used in the NPRM.

Comments: Definitions

Commenters generally were concerned that any words or language intended to describe an event or circumstance that would trigger an enforcement action under the proposed rule must be defined clearly and concisely so that all affected recipients are treated equally. Some commenters felt that if the terms were left to the discretion and interpretation of the investigator or FTA representative handling the issue, there would be the potential for an uneven application of the regulation across recipients and subrecipients. In light of this concern, a number of commenters suggested that FTA clarify some of the proposed definitions, including, specifically, Accountable Executive; pattern or practice; audit; examination; inspection; investigation; corrective action plan; advisory; National Public Transportation Safety Plan; recipient; and testing.

In general, FTA appreciates the concerns regarding some of the proposed definitions, and the requests for additional definitions. As appropriate, FTA has incorporated into this rulemaking definitions that appear in other Section 5329 rulemakings, including the definition of hazard. FTA made changes to the following definitions to clarify their meaning: Advisory; audit; corrective action plan; directive; examination; inspection; pattern or practice; and State Safety Oversight Agency.

"Accountable Executive"

Several commenters asked whether an "Accountable Executive" would be an agency CEO or general manager. Some commenters also asked for clarification on the qualifications required to fulfill this role, stating that incumbents with this responsibility should possess comparable levels of competence, experience and authority to ensure consistency across the industry. One commenter requested that FTA revised the definition to state that a State Department of Transportation (State DOT), by virtue of providing funds, advice, or administrative planning or support to a subrecipient agency, is not an Accountable Executive with respect to that agency. Finally, one commenter asked FTA to define "Transit Asset Management Plan," which appears without elaboration in the definition of Accountable Executive.

FTA RESPONSE: FTA has aligned the definition of "Accountable Executive" with the definition established in the final State Safety Oversight rule, now codified at 49 CFR part 674. FTA believes the definition is both broad and specific enough to allow the intended local safety oversight responsibility to function effectively while also allowing for flexibility to scale to the needs of various recipients and their systems. Notably, a State DOT would not be an Accountable Executive; however, there may be situations in which an employee of a State DOT is an Accountable Executive, as when the State DOT provides public transportation service. FTA declines to establish minimum qualifications for Accountable Executives, as the level of experience and authority required may vary from agency to agency. The term "Transit Asset Management Plan" which appears within the definition of "Accountable Executive" is not defined in this rule because it is defined in FTA's recently issued Transit Asset Management rule. (*See* 81 FR 48890, July 26, 2016.) FTA believes the definition for "National Public Transportation Safety Plan" is sufficient given the additional description of the Plan in section 670.31.

"Pattern or practice" and "Finding"

A number of commenters were concerned that the definition of "pattern or practice" is unclear, and does not explicitly define what constitutes a "finding." In particular, commenters were concerned with the lack of specificity on what minimal and maximal time span between findings would constitute a pattern; whether findings would be limited to only violations found during one investigation or over multiple investigations; and whether findings must be related or be of some specific but undefined level of severity. Commenters suggested that "finding" should be included as a defined term, to clarify how the results of inspections, investigations, audits, examinations and testing relate to "findings" and whether the conclusions from inspections, investigations, audits, examinations and testing constitute "findings" or if a "finding" is something pursuant to a more specific process or particular procedure. Some commenters suggested that pattern or practice should be more explicitly defined as two or more events within a 12-month period. Finally, a few commenters stated that a pattern or practice should only apply to multiple findings with the same operator and not across multiple operators in an overall public transit system.

FTA RESPONSE: FTA has chosen not to make substantive changes to the proposed definition of ‘‘pattern or practice.’’ A narrow definition of this term would limit FTA's ability to administer its safety oversight responsibilities. Moreover, a pattern or practice triggering an enforcement action will differ from one recipient to the next, and will depend, in part, on a recipient's mode of operation, the size and complexity of the recipient's operations, and the recipient's unique operating environment. This same rationale applies to many other definitions FTA is leaving unchanged. Finally, terms such as ‘‘finding’’ that are not defined by statute or regulation will be interpreted in accordance with the definition set forth in dictionaries of common usage.

‘‘Examination,’’ ‘‘Inspection,’’ ‘‘Audit’’ and ‘‘Investigation’’

Several commenters stated the differences between the definitions of ‘‘examination,’’ ‘‘inspection,’’ ‘‘audit’’ and ‘‘investigation’’ were minor and not well-defined, particularly the differences between examination and inspection. Some questioned why an inspection might lead to a finding of a pattern or practice of safety violations, but examinations and audits would not. One commenter suggested deleting ‘‘examination’’ since it was very similar to ‘‘inspection.’’

FTA RESPONSE: In response to concerns over the lack of obvious distinctions between the definitions of examinations, inspections, audits and investigations, FTA has revised the definition of ‘‘inspection’’ in the final rule to elaborate on the activities and distinguishing characteristics of an inspection versus an ‘‘examination.’’ Specifically, the final rule clarifies that an inspection is a physical act of observation whereas an examination is a process. Each of these functions—investigations, inspections, audits, and examinations—are authorized by 49 U.S.C. 5329(g), and each is a separate but integral part of the overall mechanism and process for collecting relevant information for purposes of safety oversight. FTA has chosen not to define the phrase ‘‘reasonable time and manner’’ as it applies to this information collection process, as a narrow definition of this term would impede FTA's ability to effectively carry out its congressionally mandated safety oversight role.

‘‘Unsafe Condition or Practice’’ and ‘‘Safety Violation’’

With respect to the definition of ‘‘pattern or practice’’ and in general response to the proposed rule's sections on enforcement actions, several commenters asked FTA to define ‘‘unsafe condition or practice’’ and ‘‘safety violation.’’ Some also suggested adding the term ‘‘serious’’ or ‘‘serious safety violation’’ as a definition to clarify what constituted ‘‘serious’’ safety violations, and what the relative and actionable difference was between a ‘‘serious’’ safety violation and a safety violation that was not ‘‘serious.’’

FTA RESPONSE: FTA does not believe that it is appropriate to define ‘‘serious safety violation’’ through regulation. As previously mentioned, FTA's approach to the administration of the safety program is both scalable and flexible. A narrow definition of ‘‘serious safety violation’’ would impede FTA's ability to provide flexible oversight of the Safety Program. For example, a serious safety violation could include a violation of Federal transit safety law that leads to death or serious injury of a passenger or transit employee. A serious safety violation also could include a violation of Federal transit safety law that could lead to death or serious injury of a passenger or transit employee. Further, a serious safety violation could include a rail transit agency's failure to comply with a corrective action plan or a small bus operator's failure to develop and implement a transit agency safety plan, once the rule requiring such plans becomes final. FTA does not believe that the aforementioned examples, however, encompass the full scope of what FTA could consider a serious safety violation, and therefore does not agree that it should define the term in this rule.

‘‘Recipient’’

Some commenters stated that although the definition of ‘‘recipient’’ implies inclusion of SSOAs as recipients of Chapter 53 funding, the description of actual affected entities throughout the NPRM suggested that it applied to public transit agencies and not SSOAs. Those commenters asked for clarification on whether SSOAs were implicitly included in the definition. Those commenters further stated that if FTA intended to include SSOAs, there would be a disincentive for SSOAs to participate in the formula grant program, and recommended that FTA explicitly exclude SSOAs from the definition of ‘‘recipient.’’

FTA RESPONSE: In response to comments, FTA has revised the definition of ‘‘recipient’’ to align with the statutory definition of that term at 49 U.S.C. 5329(a). We have also clarified that the term ‘‘recipient’’ includes State Safety Oversight Agencies.

‘‘More Frequent Oversight’’

A few commenters asked FTA to define what it meant by ‘‘more frequent oversight’’ as part of the suite of enforcement actions that FTA could initiate under section 670.21.

FTA RESPONSE: FTA does not agree that it should provide a definition for the term ‘‘more frequent oversight.’’ The frequency of enhanced oversight of a recipient by FTA will vary on a case-by-case basis.

‘‘Reportable Incident’’ and ‘‘Occurrence’’

One commenter asked if the definitions from FTA's SSO rule, codified at 49 CFR 674, of ‘‘reportable incident’’ and ‘‘occurrence’’ would be incorporated into the current proposed rule.

FTA RESPONSE: Definitions for ‘‘reportable incident’’ and ‘‘occurrence’’ were not included in the NPRM, and therefore, will not be included in this final rule.

‘‘Corrective Action Plan’’

A few commenters asked FTA to enhance the existing ‘‘corrective action plan’’ definition to capture the broader processes or mechanisms associated with the ongoing management of corrective action plans by recipients and oversight agencies.

FTA RESPONSE: FTA has revised the definition of ‘‘corrective action plan’’ to align with the definition of that term in the final rule for State Safety Oversight at 49 CFR part 674.

Other Terms

One commenter asked for definitions of the following individual terms: ‘‘hazard’’; ‘‘assessment’’; ‘‘evaluation’’; ‘‘light rail’’ and ‘‘heavy rail’’; ‘‘enforcement’’; ‘‘employee accident and injury’’; and ‘‘near miss’’. Commenters also suggested that FTA define the following additional terms: analysis; safety deficiency; noncompliance; public transportation system; and state of good repair.

FTA RESPONSE: FTA is not including definitions for the following terms that were not included in the NPRM proposals: ‘‘light rail,’’ ‘‘heavy rail,’’ ‘‘employee accident and injury,’’ and ‘‘near miss.’’ The following terms are not defined in this rule, statute or regulation and will be interpreted in accordance with the definition set forth in dictionaries of common usage: "assessment"; "evaluation";" analysis"; and "noncompliance."

FTA does not agree that it needs to define the term "public transportation system." FTA believes that it is clear that the term means a transit system operated by a recipient of funds under 49 U.S.C. chapter 53 and "recipient" is a defined term under the rule.

FTA does not agree that it should define the term "safety deficiency." What amounts to a "safety deficiency" will vary on a case-by-case basis.

As required by 49 U.S.C. 5326(b)(1), FTA has defined the term "state of good repair" in the Transit Asset Management final rule, which was published on July 26, 2016. (81 FR 48889).

Subpart B—Compliance Assessments

In this final rule, FTA has changed the heading of this subpart from "Compliance Assessments" to "Inspections, Investigations, Audits, Examinations and Testing" to better describe the subject matter of this subpart.

670.11 General

In this final rule, FTA has changed the title of this section from "Inspections, Investigations, Audits, Examinations and Testing" to "General." In the NPRM, this section set forth FTA's statutory authority to conduct inspections, investigations, audits, examinations and testing. In the NPRM, FTA asked how it should define "reasonable time and manner" for entering into and inspecting a recipient's equipment, facilities, rolling stock, operations, and relevant records.

Comments: General

With respect to "reasonable time," commenters suggested: (1) At least forty-eight hours; (2) twenty-four hours; (3) a few days (4); five days; (5) thirty days; and (6) sixty days. A few commenters also recommended that FTA adopt the investigation processes currently used by other Federal agencies. A few commenters indicated the need for more clarity and requested that FTA propose specific language to define the terms "reasonable time" and "reasonable manner." One commenter requested clarity regarding "written notice" as it is used in section 670.11(b). Another commenter asked what would trigger an inspection: passage of time; a particular incident; or an industry-wide issue. The commenter stated that uncertainties would lead to confusion about what is expected as transit agencies seek to accommodate FTA's efforts and requirements. Another commenter requested that FTA define the SSOA's role and responsibilities when FTA takes enforcement actions.

One commenter stated that FTA should clarify whether it has the authority to enter a transit property even without the consent of the recipient. The commenter noted that even with written notification, a recipient may object to external auditors entering its property for various reasons, including insufficient training (such as roadway worker protection) and administrative issues, such as schedule conflicts. Other commenters requested that FTA clarify the following: (1) Whether its representatives must be escorted by authorized transit agency representatives while on the property for the purposes of conducting an audit or inspection; and (2) whether FTA representatives must receive agency-required safety training (such as roadway worker protection) in order to enter a rail right-of-way. Several commenters noted that FTA should require its representatives to follow all of a recipient's applicable safety rules and procedures during the course of conducting an audit or inspection.

Regarding the process for providing notice, some commenters stated that FTA should provide advance written notice to a recipient stating the purpose for the inspection. Several commenters noted that the written notice should reference the specific information that FTA would be seeking. A few commenters recommended that FTA also provide notice to an SSOA prior to inspecting a rail transit agency. Many commenters suggested that the written notice should be directed to a recipient's general manager, chief executive officer, or other Accountable Executive, with a copy provided to the SSOA. A few commenters stated that notification should include an official letter emailed to the Accountable Executive or their designated point of contact and a phone call. Several commenters suggested that FTA require some form of delivery/read receipt to confirm a recipient's receipt of the notification.

One commenter recommended that FTA work cooperatively and collaboratively with a recipient to establish an agenda for the site visit. Other commenters acknowledged that emergency situations would eliminate the need for notification. Two commenters noted that there should be limits on the number of times FTA can audit a transit agency unless there are significant safety findings during an audit or investigation. One commenter indicated support for unannounced FTA inspections, testing, and records reviews, but noted that the Federal process should not prevent the transit agency from providing its routine transit service safely, nor put any of the FTA, SSOA, transit agency personnel, or members of the public at risk during the process.

Some commenters recommended that Federal personnel should receive the recipient's approved track safety training prior to conducting activities within a recipient's transit system. One commenter stated that Federal personnel should provide a recipient with details of their safety training and certification.

One commenter stated that a final rule explicitly should allow host agencies to determine reasonable and safe options for granting an FTA request to inspect or test equipment, or to enter restricted or otherwise potentially hazardous areas. Additionally, the commenter suggested that a final rule should allow the host agency's lead representative to call an emergency "stop" to activities, at his or her discretion, for fire-life-safety reasons, if unsafe behavior is observed that could potentially place a person in danger, or if required personal protective equipment is not worn or not used appropriately.

Commenters requested additional details regarding how, why and when FTA would enter a public transportation system to conduct a safety inspection. Commenters also requested that FTA define its role, responsibilities and authority in the testing and inspection of a public transportation system's equipment, facilities, rolling stock and operations.

A number of commenters questioned how FTA and SSOAs would coordinate activities with a rail transit agency when FTA exercises its authority under the section. Some commenters recommended that FTA develop program standards for conducting activities under the section and submit them for public comment. Several commenters also noted that the proposed regulatory text did not include notification to the State when FTA would notify a recipient of its intent to exercise authority under the section. A few other commenters recommended that FTA focus its oversight on rail safety, asserting that bus-only systems are already safe.

One commenter asked how FTA's inspections, oversight, safety standards, or directives would complement, supplement, or possibly conflict with those of SSOAs. The commenter recommended that FTA clarify the nature of coordination, if any, between FTA and an SSOA. The commenter also suggested that FTA's authority to conduct random safety inspections at any time without notice or coordination with a rail transit agency could consequently divert critical staff resources away from operations or maintenance activities or interfere with the smooth functioning of daily transit operations.

Commenters also asked whether FTA would delegate its authority to carry out this section to an SSOA. Similarly, a commenter stated that since SSOAs and FTA are safety oversight partners, there should be a mechanism for FTA to work with an SSOA and factor SSOA findings into any FTA enforcement action. The commenter recommended that there should be a detailed process for monitoring corrective actions between FTA and SSOAs.

FTA also received comments regarding how this section aligned with FTA's available online SMS Awareness training. One commenter noted, and asked for an explanation of, an apparent discrepancy between FTA's SMS Awareness training, which specifically says that investigations are not a function of SMS, and the NPRM, which indicates that the inspections, investigations, audits, examinations and testing are directly a part of an SMS approach.

Several commenters noted that the SMS reviews and audits should be part of the triennial or state management reviews, unless there has been an accident that the National Transportation Safety Board (NTSB) is investigating. These commenters recommended that FTA define the specific types of incidents or complaints that could result in an FTA audit or investigation. Another commenter suggested that FTA state the frequency it proposes to inspect, audit or perform a "compliance assessment" of each property. This commenter also recommended that for efficiency purposes, FTA's inspection cycle should correspond with the SSOA triennial reviews of local rail transit operators. Commenters stated that if a property is undertaking a robust SMS, then the FTA assessment cycle should be longer. For clarity, commenters recommended that FTA include language which describes the new compliance assessments contemplated by this rulemaking, and describes how they will correspond with existing oversight programs and grant management procedures.

With regard to proposed section 670.11(b), commenters queried whether the prescription of "recordkeeping and reporting requirements" was meant to apply solely to the production of documents for the purposes of the inspection or audit at hand, or if FTA would be able to direct agency-wide recordkeeping and reporting practices at any time.

FTA Response: General

FTA appreciates those commenters who responded to our request for comment on how "reasonable time" and "reasonable manner" should be defined for the purpose of FTA entering into and inspecting equipment, facilities, rolling stock, operations and relevant records. Upon consideration of the comments, FTA has decided not to define "reasonable time" or "reasonable manner" in regulatory text. FTA does not believe that narrowly defining "reasonable time and manner" would enable FTA to sufficiently oversee the safety of our Nation's transit systems. For instance, there are a number of scenarios that may require FTA to enter into and inspect a recipient's property with minimal notification.

Accordingly, under the final rule, the Administrator has discretion in determining what amounts to a reasonable time and manner, on a case-by-case basis. FTA believes it should have flexibility with regard to how it will notify a recipient. Thus, the medium utilized to convey notice should not be limited by regulatory text. FTA will use reasonable means of communication to include telephonic and electronic media. FTA will work with transit systems and appropriate State entities to ensure that adequate notice is provided so that Federal personnel do not unduly impede operations.

FTA does not agree with those commenters who indicated that a host agency should be able to place limitations on FTA's exercise of its statutory authority when conducting compliance activities associated with this rule. Further, FTA does not agree with commenters who suggested that it should prescribe through regulation how and when it would conduct safety inspections, investigations, audits, examinations and testing. FTA's actions will be based on consideration of particular sets of facts. FTA does not believe that limiting the scope of the actions it has the authority to take via rulemaking contributes to improving public transportation safety. Relatedly, FTA does not believe it is appropriate to define through regulation its role, responsibilities, and authority in the inspecting, investigating, auditing, examining, and testing of a public transportation system's equipment, facilities, rolling stock and operation, as each activity may require flexibility on behalf of FTA and the recipient.

FTA agrees with those commenters who suggested that FTA and its designees comply with a recipient's safety and training protocols and requirements. FTA will coordinate with recipients to ensure its activities are carried out in a safe manner. In addition, when FTA conducts safety activities at a rail transit agency, FTA will coordinate with the relevant SSOA as necessary and to the extent practicable. However, it may not always be feasible for an FTA representative to undergo agency-specific training or verify his or her training to a recipient before conducting safety activities on behalf of FTA under this rule.

In general, FTA disagrees with those commenters who suggested that FTA provide more prescriptive processes. FTA believes that a certain level of flexibility is necessary in order for the agency to effectively administer the Safety Program. For example, FTA does not believe that it should be limited to only engaging in activities under this section upon the consent of a recipient. To do so would be unreasonable, considering there will likely be occasions when inspections and investigations are required when FTA becomes aware of an accident. In addition, FTA does not agree with commenters who suggested that FTA formally establish a schedule for conducting activities under this section or that FTA align its activities under this section with existing audit processes. FTA may establish a formal schedule for conducting activities under this section in the future, but a schedule is not appropriate for this rule.

In exercising its enhanced statutory authority for safety oversight, FTA recognizes the critical role of State and local safety oversight partners. To that end, FTA will work with SSOA and transit system personnel to accommodate operational and staffing challenges that may occur as it exercises its authority. However, FTA does not agree that it should delegate its authority to the SSOAs. In response to the comment regarding SMS Awareness training, FTA notes that implementation of SMS principles in no way contradicts or conflicts with its authority to engage in inspections, investigations, or other regulatory compliance processes.

One commenter asked whether the proposed provision to impose more frequent reporting requirements applied to documents requested for purposes of an audit or inspection, or if FTA would be able to direct agency-wide recordkeeping and reporting practices at any time. As proposed, FTA could impose more frequent reporting requirements that would not necessarily be tied to an audit or inspection. FTA maintained this provision in the final rule without substantive change.

FTA made a few nonsubstantive, clarifying edits to this section in the final rule. In addition, FTA eliminated the 30-day response timeframe for document requests because there may be instances where FTA needs requested information more quickly. Also, as stated above, FTA refined the notice provision in this section to provide that the Administrator will decide on a case-by-case basis what "reasonable time and manner" would be for FTA to enter into and inspect or test equipment, facilities, rolling stock, operations, and relevant records.

670.13 Request for Confidential Treatment of Records

This section proposed procedures for a recipient to request confidential treatment of any record filed with or otherwise provided to FTA in connection with its administration of the Safety Program.

Comments: Request for Confidential Treatment of Records

Many commenters questioned the authority by which FTA would be able to protect information it received from recipients from public disclosure. Commenters asked how FTA would ensure the integrity of confidential information during all phases of the reporting and information retention process. A few commenters stated that the proposed regulatory text was insufficient to provide automatic blanket protection for any information pertaining to public safety or that is safety-critical or safety-sensitive. Several commenters stated that FTA's proposed confidentiality clause would add nothing to existing law, and only narrow the exemption window through overly technical requirements which would allow automatic full disclosure of potentially security sensitive information if a transit agency accidentally neglects to submit the correct format.

A few commenters suggested that FTA clarify that the Freedom of Information Act (FOIA) exemptions apply to all recipients, whether or not they are subject to FOIA. One commenter further noted FTA should explicitly recognize confidentiality provisions under other FOIA-like policies that are adopted by transit agencies. However, a number of commenters asserted that State law could overrule Federal confidentiality protection, and that the language of the proposed rule was not sufficient to prevent documents from being discovered in a civil action or being disclosed in response to a public records request at the State level. Commenters suggested that FTA should recognize that States are unable to afford transit agencies this protection, even if FTA determines a record is confidential. The commenters recommended that FTA provide protection for any sensitive or confidential information, and ensure that Federal confidentiality supersedes any State disclosure requirements.

Another commenter asked that FTA describe the objective process FTA would use to determine if records are subject to public disclosure. One commenter was concerned that a recipient may use the provision to report directly to FTA and bypass and withhold information from its SSOA, which is obligated (as a State/local agency) under State law to disclose any investigative reports or safety information.

A few commenters expressed concern that FTA proposed to reserve the right to make its own final determination of whether a confidentiality request would be granted. Commenters asked for clarification on the circumstances under which FTA would not keep records confidential, as requested. The commenters also stated such authority to make final determinations would overrule existing State laws and authorities, as well as Sensitive Security Information (SSI) guidelines.

One large transit agency commented that 18 U.S.C. 1905 applies only to Federal employees or Federal agencies, and not to transit agencies since they are not Federal entities. The commenter suggested that this section should therefore include clarification that the disclosure provisions of 18 U.S.C. 1905 will apply to transit agencies that submit records pursuant to a request for confidentiality, even though they are not Federal entities. Another commenter stated that since an agency is required to submit any record for which it is seeking confidential status, the act of that submittal destroys or constitutes a waiver of a transit agency's right to confidentiality of records for which it claims attorney-client or work product privilege. The commenter suggested that a transit agency could instead provide pertinent information regarding date, time, location and a brief explanation of the basis for asserting attorney-client or work product privilege.

Several commenters suggested that FTA allow a transit agency 30 working days to evaluate and respond to a decision by the Administrator to deny a confidentiality request. Commenters recommended that a final rule provide a reasonable appeal mechanism for transit agencies that disagree with the Administrator's decision to release records. Other commenters recommended that the minimum amount of time given to an agency to respond to an FTA denial of confidential treatment should be changed to at least 10 days, due to the harm that such release could cause.

FTA Response: Request for Confidential Treatment of Records

To clarify, the proposed confidentiality provision was not intended to protect information from public disclosure. The provision was intended to provide recipients with the opportunity to alert FTA of the alleged confidentiality of a requested record. Unlike other Federal safety regulatory agencies, FTA does not have statutory authority to protect safety-related information. However, under the State Safety Oversight (SSO) rules at 49 CFR 674.27(a)(7), an SSOA's program standard must include procedures for protecting the confidentiality of investigation reports.

Documents submitted to FTA are subject to FOIA and are generally releasable to the public upon request. FTA may maintain the confidentiality of accident investigations, incident reports, and other safety-related information to the maximum extent permitted under Federal law, including the nine exemptions under FOIA. FTA will evaluate whether or not a document may be withheld from public disclosure under the Department of Transportation's FOIA rules at 49 CFR part 7.

FTA agrees that its confidential treatment of information would not preempt State law; therefore, recipients should exercise their use of this provision accordingly.

FTA made nonsubstantive, clarifying edits to this section in the final rule.

Subpart C Enforcement

670.21 General

This section of the NPRM set forth the Administrator's enforcement authorities under 49 U.S.C. 5329.

In general, FTA's responses to comments received on this section are addressed in other sections throughout the preamble. For example, comments related to reporting requirements are addressed in the response to comments under section 670.11, above. Responses to comments related to withholding of funds immediately follow this section, below.

FTA has made two changes to this section as a result of FAST Act amendments made to 49 U.S.C. 5329. First, FTA revised section 670.21(e) to limit withholding of a recipient's 49 U.S.C. 5307 funds to no more than twenty-five (25) percent. Second, FTA added a new section 670.21(g) to explicitly incorporate into this rule FTA's authority to issue restrictions and prohibitions on a recipient's operations, if through testing, inspection, investigation, audit or research the Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury. The language in the rule is identical to the language in the statute. Further, the proposed rule included the authority for FTA to issue special directives in the event an unsafe practice or condition caused an emergency situation involving a hazard of death, personal injury, damage to property or equipment, or significant harm to the environment. The authority under new section 670.21(g) may be considered a specific type of special directive, applicable in certain circumstances, and thus is materially related to FTA's proposal to issue special directives. Moreover, FTA finds good cause to include reference to its authority to issue restrictions and prohibitions in the final rule. In the NPRM, section 670.21(a)–(f) included a list of the authorities provided to FTA by Congress in MAP–21 to carry out the Safety Program. In this final rule, FTA has added a new subsection 670.21(g) which merely adds to the list of authorities provided to FTA under MAP–21, to reflect the authority to issue restrictions and prohibitions that was added under the FAST Act. Accordingly, FTA has "good cause" under the Administrative Procedure Act (5 U.S.C. 553(b)) to finalize these provisions at this time because additional public comment is "unnecessary" as the rule merely restates the statutory provision.

670.23 Use or Withholding of Funds

This section proposed procedures for FTA to direct the use of Chapter 53 funds where safety deficiencies are identified by the Administrator or an SSOA. This section also proposed procedures for withholding of Chapter 53 funds from a recipient or State for non-compliance, where the Administrator determines that there has been a pattern or practice of serious violations of the Safety Program or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety.

Comments: Use or Withholding of Funds

Many commenters expressed concern about the potential loss of Federal funding as a result of safety violations, as many safety violations may be due to preexisting and chronic underinvestment, with any loss of funding resulting in a worsening of transit agencies' financial situations and greater safety deficiencies. In addition, several commenters stated that the connection between States, SSOAs and transit agencies was unclear, and that the NPRM did not explain how a State would be held responsible for a safety deficiency at a transit agency. These commenters asked that the rule clarify what is meant by a State, and to clearly differentiate how the notification, appeal, and withholding actions and procedures would affect the various entities.

One commenter stated that SSOAs should not be subject to this section because, although the definition of "recipient" in section 670.5 implies inclusion of SSOAs, the description of actual affected entities throughout the NPRM instead suggests only public transit agencies. The commenter suggested that SSOA funding be excluded from the definition of "recipient" under section 670.5.

Several commenters expressed concern that funding could be withheld from the entire State or SSOA, due to the action (or inaction) of a single subrecipient, thus penalizing all the subrecipients in the State. The commenters asked that FTA add language to section 670.23 to either explain the rationale and process for holding a State liable for the deficiencies of a particular transit agency, or add language which would limit enforcement actions to the particular subrecipient instead of the entire State. Similarly, one commenter stated that there should be a process to ensure that a rail transit agency in one State does not cause FTA to withhold chapter 53 funds from an SSOA or rail transit agency in another State.

Several commenters stated that section 670.23(b)(3) only allows, but does not compel, FTA to consider a recipient's response to a notice of violation. Commenters suggested that FTA should have to consider a recipient's response to a notice of violation. These commenters also stated that this section did not adequately provide an opportunity for notice and comment. In addition, commenters stated that this section did not provide a sufficient process for a transit agency to appeal an erroneous notice of violation, which could result in a significant loss of funding. One commenter further stated that withholding of funds should be considered only after consultation with the SSOA and after a rail transit agency has been given ample opportunity to address the safety concern and respond to FTA. One commenter suggested that FTA should not withhold funding from a recipient who corrects an identified deficiency by implementing FTA's required remedial action and mitigates the deficiency within the 90 days following the initial notice of violation.

Some commenters stated that because of the similarities between this section and section 670.27, special directives should be invoked as a remedy for program deficiencies before withholding funds, and that this sequence should be clearly required in the rule. Another commenter requested that section 670.23 be incorporated into section 670.27, due to its more developed appeal process, so that transit agencies would have more recourse in the case of an FTA decision to withhold funding.

Several commenters asked what would happen if FTA failed to adhere to the established 30-day decision timeline under section 670.23(b)(3) and queried whether the violation would be automatically dismissed if the deadline passed or whether FTA would be subject to consequences for missing the deadlines. One commenter stated that an FTA decision to redirect or withhold funds amounts to an unfunded mandate.

FTA Response: Use or Withholding of Funds

FTA understands that many transit operators, especially smaller transit operators, have limited financial resources. However, FTA believes that the decision to withhold funds should be at the discretion of the FTA Administrator, in consideration of the nature and severity of the safety violation at issue. FTA may consult with an SSOA before withholding any funding or issuing a violation to a rail transit agency. However, FTA does not believe that it needs to prescribe such a process in regulatory text.

FTA will not hold an SSOA directly accountable for a safety deficiency at a rail transit agency. However, FTA may hold an SSOA accountable for failing to adequately oversee a rail transit system. Accordingly, FTA does not believe that SSOAs should be excluded from this rule. FTA agrees that all subrecipients in a State should not be held accountable for one subrecipient's actions, and we have removed the word

"State" from 670.23(c)(ii). FTA will not withhold funds from a rail transit agency because of a safety issue related to another rail transit agency.

In the NPRM, FTA proposed a process for a recipient to respond to a notice of violation. FTA proposed to issue a response to the recipient within 30 days of its receipt of the recipient's response. FTA has changed "may" to "shall" to indicate the Administrator will consider a recipient's response. FTA intends to make a decision within 30 days of receiving a response from a recipient, but FTA will not automatically dismiss violations if it misses the deadline.

FTA's enforcement tools under the Safety Program include directing the use of funds, withholding funds, and issuing directives. Intentionally, FTA did not define specific circumstances that would trigger FTA to take one action over another or prescribe specific timeframes that a recipient would need to comply with a special directive. An enforcement action that may be appropriate to address one recipient's safety issue may not be appropriate to address the same issue at another recipient's transit system. FTA's recipients range in diversity of mode, operating environment, sophistication, expertise and resources. FTA believes it is important to establish and implement the Safety Program in a manner that is both scalable and flexible. FTA does not agree that requiring that funding be redirected or withheld is an unfunded mandate.

In the final rule, FTA has reorganized this section for clarity. In addition, FTA has revised this section to limit the amount that may be withheld to not more than 25% of section 5307 funds in accordance with 49 U.S.C. 5329(g).

670.25 General Directives and 670.27 Special Directives

In section 670.25, FTA proposed procedures for the issuance of a general directive by the Administrator. In section 670.27, FTA proposed procedures for the issuance of a special directive to one or more named recipients.

Comments: General Directives and Special Directives

FTA received a number of comments related to the proposed rule for general and special directives. Some commenters asked for clarifications on the proposed procedures for both types of directives. Some comments requested that FTA specify which directives require general manager and Board response, stipulate timelines for response due dates, and clarify the notice and appeal processes. One commenter stated that there was no process identified for FTA to notify a recipient in a timely way that its response to a directive is satisfactory, which could delay a recipient's implementation of a corrective action and put the transit system in a position of increased liability or undermine public confidence. One commenter noted that State and local agencies would need time to implement a general or special directive and recommended that FTA provide a time period for implementation.

Several commenters noted that the processes for responding to or appealing the FTA Administrator's decisions under part 670 are inconsistent depending on whether it is a general directive, a special directive, or a withholding of funds. One commenter suggested that FTA devote one section solely to responding to or appealing the Administrator's decisions.

A number of commenters noted that the rule did not define emergency situations that might give rise to the issuance of a general directive. Commenters suggested that FTA define "emergency situation."

Some commenters stated that FTA did not have the authority to take enforcement action because of a "significant harm to the environment."

One commenter requested that FTA provide specific details about the enforcement action that could be taken under each section. A commenter asked how FTA would identify the need for a general or special directive and how FTA would ensure that qualified persons were involved in the development of a directive.

One commenter noted that under proposed section 670.27(d), a recipient would be required to "observe" a special directive during FTA's review of a petition for reconsideration. The commenter also noted that proposed section 670.27(f)(4) did not provide a timeframe from when FTA would make a decision to when a recipient would be notified of FTA's decision, during which time a recipient would still be required to "observe" the special directive. The commenter asked what "observe" meant and how FTA would enforce the provision if a recipient could not meet the requirements of a special directive.

One commenter suggested that petitions for reconsideration should, at a minimum, be handled by the original authority, a peer, or a superior authority, instead of the FTA Chief Counsel, asserting that the Chief Counsel should not be placed in the position of appellate authority over his or her Administrator.

FTA Response: General Directives and Special Directives

Intentionally, FTA did not define specific circumstances that would trigger FTA to take one action over another or prescribe specific timeframes that a recipient would need to comply with either a general or special directive. As stated above, an enforcement action that may be appropriate to address one recipient's safety issue may not be appropriate to address the same issue at another recipient's transit system. FTA's recipients range in diversity of mode, operating environment, sophistication, expertise and resources. FTA believes that it is important to establish and implement the Safety Program in a manner that is both scalable and flexible.

In section 670.25, FTA proposed to issue general directives that could apply to all recipients or a subset of recipients and that would be effective upon notice provided by the Administrator in the **Federal Register**. A general directive would be subject to a public comment period. Following the public notice and comment period, FTA would publish a response to the comments in the **Federal Register**. The **Federal Register** notice also would include a final iteration of the general directive.

Upon further consideration, FTA has determined that general directives and the **Federal Register** process are not appropriate means with which to address an emergency situation. However, FTA believes that providing notice and an opportunity for comment through the **Federal Register** is an appropriate method of addressing safety issues that require mitigation, but need not be addressed immediately upon notice. Accordingly, under the final rule, FTA would not use a general directive to address an emergency situation.

Special directives are the more appropriate tool to address emergency situations. In the NPRM, FTA proposed to issue a special directive to one or more named recipients to address a safety issue specific to the recipient's transit systems. A special directive would become effective upon direct notice from FTA to a recipient. FTA has retained the NPRM provisions related to when FTA would issue a special directive.

FTA agrees with the commenter who suggested that FTA's Chief Counsel should not be placed in the position of appellate authority over the Administrator. Under this rule, the Deputy Administrator will issue special directives, and the Administrator will serve as the final appellate authority for special directives. Within 90 days of the receipt of a petition for reconsideration, the Administrator would either grant or deny a petition, in whole or in part, and provide notice to a recipient of his or her decision.

Because FTA will issue special directives when it FTA finds a substantial risk of death or personal injury, or damage to property or equipment, a recipient will be required to "observe" the actions required under a special directive while its petition was being reviewed by the Administrator. Within this context, "observe" means that the recipient must implement the requirements under the special directive during the review period. FTA will provide guidance to a recipient on what specific steps need be taken to implement the requirements of the special directive during the review period.

FTA agrees with commenters who suggested that FTA not take action under this rule to address a "significant harm to the environment." FTA's primary goal under the Safety Program is to ensure the safety of passengers and transit workers. Readers should note, however, that FTA does have the authority to address environmental issues related to a public transportation system that have an impact on passenger or worker safety. FTA has revised the final rule to remove the language related to harm to the environment.

670.29 Advisories

This section described how the Administrator would issue advisories, which would recommend corrective actions to resolve or mitigate an unsafe condition.

Comments: Advisories

Several commenters noted that, as proposed, compliance by a recipient with an advisory would be discretionary. Commenters also noted that advisories issued by other Federal agencies are not discretionary and include required actions. Accordingly, a commenter suggested that FTA use "bulletin" instead of "advisory."

Commenters asked why FTA did not propose to submit an advisory to a public notice and comment process similar to what was proposed for a general directive. One commenter recommended that FTA establish a formal process for issuing advisories. Several commenters requested clarification on how an advisory would be issued and whether a recipient would have an opportunity to respond.

There were a number of comments related to proposed section 670.29(b). In that section, FTA proposed that the Administrator could take a recipient's noncompliance with an advisory into consideration when deciding to take an enforcement action. One commenter noted that this section was inconsistent with SMS. The commenter noted that each agency would determine whether or not the hazard or risk referenced in the advisory was relevant, and if so, determine an appropriate strategy to reduce risk to an acceptable level, which could include an alternative mitigation than what was recommended in the advisory.

Some commenters asked whether the subject matter of an advisory could lead to the issuance of a special directive. One commenter asked whether FTA planned to issue civil penalties against a recipient which did not comply with an advisory, and noted that other U.S. DOT administrations do not assess civil penalties under such circumstances.

Several commenters sought clarification on the difference between an advisory and a directive. One commenter suggested that FTA strike the section on advisories because FTA should address unsafe conditions with a general directive.

FTA Response: Advisories

In the NPRM, FTA proposed that advisories would include recommended actions. Directives require a recipient to take mandatory action to mitigate a specific safety risk. FTA believes it is important to establish several tools that may be used to address different levels of safety risks, from low to high. An advisory would be used to address lower level safety risks or in situations where FTA lacks sufficient data to accurately assess the risk.

Commenters were accurate in their assertions that "compliance" with an advisory would be at a recipient's discretion. FTA agrees that each agency should determine whether or not the hazard or risk addressed in an advisory is relevant to its system and determine appropriate mitigations. Due to the nature of an advisory, a recipient need not "comply" with an advisory, but instead would decide whether or not to adopt the recommended actions. Accordingly, FTA has revised this section in the final rule to remove the language stating that the Administrator would take a recipient's noncompliance with an advisory into consideration when taking enforcement actions. FTA is aware that other Federal agencies use advisories to impose mandatory requirements on their regulated communities. FTA has elected to impose mandatory requirements through the use of directives, and recommendations through the use of advisories.

FTA does not have the authority to issue civil penalties. However, FTA could issue a directive subsequent to an advisory if FTA finds that the hazard or risk identified in the advisory requires further mitigation.

FTA does not agree that it should submit mere recommendations through the public notice and comment process or establish another formal process for issuing an advisory. FTA will notify recipients of an advisory by publishing a notice in the **Federal Register**. FTA will continue to post advisories to its public Web site and incorporate them into the National Safety Plan.

670.31 Purpose and Content of the National Public Transportation Safety Plan

This section described the statutory mandates and proposed components of a National Public Transportation Safety Plan (National Safety Plan).

Comments: National Safety Plan

Several commenters supported FTA's proposals for a National Safety Plan. Some commenters requested additional information and clarification about the contents of a National Safety Plan in order to be able to comply with the Plan's requirements. One commenter asked how FTA would update a National Safety Plan and whether each update would be subject to notice and comment.

One commenter stated that a National Safety Plan must be implemented via rulemaking if SSOAs would be expected to ensure that rail transit agencies are complying with the Plan. The commenter stated that a National Safety Plan should not be updated periodically because any changes may require an SSOA to establish new rules, which would be cumbersome, time consuming and expensive. Further, the commenter noted that many small transit providers adopt rules, policies and safety plans through Board actions. Therefore, if a National Safety Plan is changed periodically, transit agencies would need several months to comply with any changes, and to allow an opportunity for comment.

One commenter requested that FTA coordinate the development of safety criteria and standards with the other U.S. DOT modal administrations, such as the FRA, to avoid conflicting standards. One commenter encouraged FTA to coordinate with transit agencies in the development of standards and criteria. The commenter suggested that a National Safety Plan include a description of safety outcomes and goals, and methods for identifying risks and targeting priorities to achieve safety goals.

Several commenters noted that it was difficult to comment on a National Safety Plan because FTA had not published final rules for other components of the Public Transportation Safety Program. Some commenters requested additional information from FTA on the nexus between state of good repair and safety.

One commenter suggested that FTA adopt the framework for a National Safety Plan that was recommended by the Transit Advisory Committee for Safety (TRACS). The commenter noted that the proposed rule included a few of the TRACS recommendations, but would benefit from a more detailed description of the necessary elements that contribute to a more robust framework.

Several commenters suggested other issues that FTA should address in a National Safety Plan, including employee issues such as driver assaults, restroom breaks, and blind spots. To ensure the safety of transit operators, a commenter recommended that a National Safety Plan require that buses be equipped with clear plastic partitions, a driver side door or window, and an emergency alarm. A commenter also recommended that a National Safety Plan require increased use of wayside fare collection, which the commenter suggested is a safer means to collect payment. Another commenter stated that a National Safety Plan must address blind spots, which make safe operation of transit buses difficult. Other commenters suggested that a National Safety Plan address pedestrian and bicycle safety.

FTA Response: National Safety Plan

FTA intends for the National Safety Plan to serve as both the primary tool for FTA to communicate with the transit industry about its safety performance, and as a repository of guidance, best practices, technical assistance, tools and other information. FTA believes that a flexible approach to implementing a National Safety Plan would be the most effective way to disseminate information. Therefore, FTA intends to publish proposed substantive updates to the National Safety Plan, such as new performance criteria, for public notice and comment, but does not believe that the National Safety Plan needs to be a rule. FTA will incorporate guidance, technical assistance, and other tools into the Plan as they become available.

In the NPRM, FTA proposed the initial contents of a National Safety Plan. The list of proposed contents was not exhaustive. On February 5, 2016, FTA published its first proposed National Safety Plan for public notice and comment. *See* 81 FR 6372. The proposed Plan includes four safety performance criteria, an SMS implementation guide, and other guidance. The proposed Plan also includes proposed voluntary standards. FTA will coordinate with relevant U.S. DOT modal administrations and the transit industry in the adoption of any mandatory standards. In addition, the proposed Plan discusses safety outcomes and goals, the nexus between state of good repair and safety, pedestrian and bicycle safety, and the role of TRACS. The comment period for the proposed Plan closed on April 5, 2016, and FTA expects to publish its first National Safety Plan in the near future.

FTA revised this section in the final rule to reflect changes to 49 U.S.C. 5329(b) as amended by the FAST Act, which require a National Safety Plan to include standards to ensure the safe operation of transit systems.

IV. Regulatory Analyses and Notices

Executive Order 12866 and 13563; USDOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Also, Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. As stated above, FTA does not believe that this rule imposes direct costs on entities other than FTA.

FTA has determined this rulemaking is a nonsignificant regulatory action within the meaning of Executive Order 12866 and is nonsignificant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. FTA has determined that this rulemaking is not economically significant. The rule will not result in an effect on the economy of $100 million or more. The rule will not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FTA has evaluated the likely effects of the rule on small entities, and has determined that they will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 109 Stat. 48).

Executive Order 13132 (Federalism)

FTA has analyzed this rule in accordance with the principles and criteria established by Executive Order 13132, and determined that this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions. Moreover, consistent with Executive Order 13132, FTA has determined that the rule does not impose direct compliance costs on State and local governments.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this rulemaking.

Paperwork Reduction Act

This rulemaking will not impose additional collection requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or the OMB regulation at 5 CFR 1320.8(d). To the extent that there are any costs and burdens associated with any collections under this rule, the information collection will be incorporated into the rulemakings for Public Transportation Agency Safety Plans, State Safety Oversight, and the Safety Certification Training Program.

National Environmental Policy Act

The National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This rule is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), pertaining to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1998), Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order 12898 (February 8, 1994) directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The USDOT environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without compromising safety or mobility. Additionally, FTA has issued a program circular addressing environmental justice in public transportation, C 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients." This circular provides a framework for FTA grantees as they integrate principles of environmental justice into their transit decision-making processes. The Circular includes recommendations for State Departments of Transportation, Metropolitan Planning Organizations, and public transportation systems on how to: (1) Fully engage environmental justice populations in the transportation decision-making process; (2) determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) avoid, minimize, or mitigate these effects.

Executive Order 12988 (Civil Justice Reform)

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this rule will not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this action under Executive Order 13175 (November 6, 2000), and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8.

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5329(f)(7), which authorizes the Secretary to issue rules to carry out the mandate for a Public Transportation Safety Program at 49 U.S.C. 5329.

Regulation Identification Number

A Regulation Identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 670

Public Transportation, Safety.

Issued in Washington, DC, under authority delegated in 49 CFR 1.91.

Carolyn Flowers,

Acting Administrator.

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(f)(7), and the delegations of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations, by adding part 670 as set forth below:

PART 670—PUBLIC TRANSPORTATION SAFETY PROGRAM

Subpart A—General Provisions

Sec.
670.1 Purpose and applicability.
670.3 Policy.
670.5 Definitions.

Subpart B—Inspections, Investigations, Audits, Examinations, and Testing

670.11 General.
670.13 Request for confidential treatment of records.

Subpart C—Enforcement

670.21 General.
670.23 Use or withholding of funds.
670.25 General directives.
670.27 Special directives.
670.29 Advisories.

Subpart D—National Public Transportation Safety Plan

670.31 Purpose and contents of the National Public Transportation Safety Plan.

Authority: 49 U.S.C. 5329, 49 CFR 1.91.

Subpart A—General Provisions

§ 670.1 Purpose and applicability.

This part carries out the mandate of 49 U.S.C. 5329 to improve the safety of public transportation systems. This part establishes substantive and procedural rules for FTA's administration of the Public Transportation Safety Program. This part applies to recipients of Federal financial assistance under 49 U.S.C. chapter 53.

§ 670.3 Policy.

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices and technical assistance administered under the authority of 49 U.S.C. 5329.

§ 670.5 Definitions.

As used in this part:

Accountable Executive means a single, identifiable individual who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Administrator means the Federal Transit Administrator or his or her designee.

Advisory means a notice that informs or warns a recipient of hazards or risks to the recipient's public transportation system. An advisory may include recommendations for avoiding or mitigating the hazards or risks.

Audit means a review or analysis of records and related materials, including, but not limited to, those related to financial accounts.

Corrective action plan means a plan developed by a recipient that describes the actions the recipient will take to minimize, control, correct or eliminate risks and hazards, and the schedule for taking those actions. Either a State Safety Oversight Agency of FTA may require a recipient to develop and carry out a corrective action plan.

Deputy Administrator means the Federal Transit Deputy Administrator or his or her designee.

Directive means a written communication from FTA to a recipient that requires the recipient to take one or more specific actions to ensure the safety of the recipient's public transportation system.

Examination means a process for gathering or analyzing facts or information related to the safety of a public transportation system.

FTA means the Federal Transit Administration.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a recipient's public transportation system; or damage to the environment.

Inspection means a physical observation of equipment, facilities, rolling stock, operations, or records for the purpose of gathering or analyzing facts or information.

Investigation means the process of determining the causal and contributing factors of an accident, incident or hazard for the purpose of preventing recurrence and mitigating risk.

National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.

Pattern or practice means two or more findings by FTA of a recipient's violation of the requirements of 49 U.S.C. 5329 or the regulations thereunder.

Recipient means a State or local governmental authority, or any other operator of public transportation that receives financial assistance under 49 U.S.C. Chapter 53. The term "recipient" includes State Safety Oversight Agencies.

Record means any writing, drawing, map, recording, diskette, DVD, CD–ROM, tape, film, photograph, or other documentary material by which information is preserved. The term "record" also includes any such documentary material stored electronically.

Risk means the composite of predicted severity and likelihood of the potential effect of a hazard.

Safety Management System (SMS) means a formal, top-down, organization-wide data-driven approach to managing safety risk and assuring the effectiveness of a recipient's safety risk mitigations. SMS includes systematic procedures, practices and policies for managing risks and hazards.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR part 659 or 49 CFR part 674.

Testing means an assessment of equipment, facilities, rolling stock or operations of a recipient's public transportation system.

Subpart B—Inspections, Investigations, Audits, Examinations and Testing

§ 670.11 General.

(a) The Administrator may conduct investigations, inspections, audits and examinations, and test the equipment, facilities, rolling stock and operations of a recipient's public transportation system.

(b) To the extent practicable, the Administrator will provide notice to a recipient prior to initiating any activities carried out under the authorities listed in paragraph (a) of this section.

(c) The Administrator will conduct activities carried out under this section at reasonable times and in a reasonable manner, as determined by the Administrator.

(d) In carrying out this section, the Administrator may require the production of relevant documents and records, take evidence, issue subpoenas and depositions, and prescribe recordkeeping and reporting requirements.

§ 670.13 Request for confidential treatment of records.

(a) The Administrator may grant a recipient's request for confidential treatment of records produced under § 670.11, on the basis that the records are—

(1) Exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt from public disclosure under Federal or State laws.

(b) A recipient must submit the record that contains the alleged confidential information with the request for confidential treatment.

(c) A recipient's request for confidential treatment must include a statement justifying nondisclosure and provide the specific legal basis upon which the request for nondisclosure should be granted.

(d) A recipient's justification statement must indicate whether the recipient is requesting confidentiality for the entire record, or whether non-confidential information in the record can be reasonably segregated from the confidential information. If a recipient is requesting confidentiality for only a portion of the record, the request must include a copy of the entire record and a second copy of the record where the purportedly confidential information has been redacted. The Administrator may assume there is no objection to public disclosure of the record in its entirety if the requestor does not submit a second copy of the record with the confidential information redacted at the time that the request is submitted.

(e) A recipient must mark any record containing any information for which confidential treatment is requested as follows—"CONFIDENTIAL" or "CONTAINS CONFIDENTIAL INFORMATION" in bold letters.

(f) The Administrator will provide notice to a recipient of his or her decision to approve or deny a request, in whole or in part, no less than five (5) days prior to the public disclosure of a record by FTA. The Administrator will provide an opportunity for a recipient to respond to his or her decision prior to the public disclosure of a record.

Subpart C—Authorities

§ 670. 21 General.

In addition to actions described in §§ 670.23 through 670.29, in exercising his or her authority under this part, the Administrator may—

(a) Require more frequent oversight of a recipient by a State Safety Oversight Agency that has jurisdiction over the recipient;

(b) Impose requirements for more frequent reporting by a recipient;

(c) Order a recipient to develop and carry out a corrective action plan; and

(d) Issue restrictions and prohibitions, if through testing, inspection, investigation, audit or research carried out under Chapter 53, the Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury.

§ 670.23 Use or withholding of funds.

(a) *Directing the use of funds.* The Administrator may require a recipient to use Chapter 53 funds to correct safety violations identified by the Administrator or a State Safety Oversight Agency before such funds are used for any other purpose.

(b) *Withholding of funds.* Except as provided under 49 CFR part 674, the Administrator may withhold not more than twenty-five (25) percent of funds apportioned under 49 U.S.C. 5307 from a recipient when the Administrator has evidence that the recipient has engaged in a pattern or practice of serious safety violations, or has otherwise refused to comply with the Public Transportation Safety Program, as codified at 49 U.S.C. 5329, or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety.

(c) *Notice.* The Administrator will issue a notice of violation that includes the amount the Administrator proposes to redirect or withhold at least ninety (90) days prior to the date from when the funds will be redirected or withheld. The notice will contain—

(1) A statement of the legal authority for its issuance;

(2) A statement of the regulatory provisions or directives FTA believes the recipient has violated;

(3) A statement of the remedial action sought to correct the violation; and

(4) A statement of facts supporting the proposed remedial action.

(d) *Reply.* Within thirty (30) days of service of a notice of violation, a recipient may file a written reply with the Administrator. Upon receipt of a written request, the Administrator may extend the time for filing for good cause shown. The reply must be in writing, and signed by the recipient's Accountable Executive or equivalent entity. A written reply may include an explanation for the alleged violation, provide relevant information or materials in response to the alleged violation or in mitigation thereof, or recommend alternative means of compliance for consideration by the Administrator.

(e) *Decision.* The Administrator will issue a written decision within thirty (30) days of his or her receipt of a recipient's reply. The Administrator shall consider a recipient's response in determining whether to dismiss the notice of violation in whole or in part. If a notice of violation is not dismissed, the Administrator may undertake any other enforcement action he or she deems appropriate.

§ 670.25 General directives.

(a) *General.* The Administrator may issue a general directive under this part that is applicable to all recipients or a subset of recipients for the following reasons—

(1) The Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exists such that there is a risk of death or personal injury, or damage to property or equipment; or

(2) For any other purpose where the Administrator determines that the public interest requires the avoidance or mitigation of a hazard or risk.

(b) *Effective date.* A general directive is effective upon final notice provided by the Administrator under paragraph (e) of this section.

(c) *Notice.* The Administrator will provide notice of a general directive to recipients in the **Federal Register**. The notice will include at minimum—

(1) A reference to the authority under which the directive is being issued;

(2) A statement of the purpose of the issuance of the directive, including a description of the subjects or issues involved and a statement of the remedial actions sought; and

(3) A statement of the time within which written comments must be received by FTA.

(d) *Consideration of comments received.* The Administrator will consider all timely comments received. Late filed comments will be considered to the extent practicable.

(e) *Final notice.* After consideration of timely comments received, the Administrator will publish a notice in the **Federal Register** that includes both a response to comments and a final general directive or a statement rescinding, revising, revoking or suspending the directive.

§ 670.27 Special directives.

(a) *General.* The Deputy Administrator may issue a special directive under this part to one or more named recipients for the following reasons—

(1) The Deputy Administrator has reason to believe that a recipient is engaging in conduct, or there is evidence of a pattern or practice of a recipient's conduct, in violation of the Public Transportation Safety Program or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety;

(2) The Deputy Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices exists such that there is a substantial risk of death or personal injury, or damage to property or equipment; or

(3) For any other purpose where the Deputy Administrator determines that the public interest requires the avoidance or mitigation of a hazard or risk through immediate compliance.

(b) *Effective date.* A special directive is effective upon notice provided by the Deputy Administrator under paragraph (c) of this section.

(c) *Notice.* The Deputy Administrator will provide notice to a recipient that is subject to a special directive. The Deputy Administrator may initially provide notice through telephonic or electronic communication; however, written notice will be served by personal service or by U.S. mail following telephonic or electronic communication. Notice will include the following information, at minimum—

(1) The name of the recipient or recipients to which the directive applies;

(2) A reference to the authority under which the directive is being issued; and

(3) A statement of the purpose of the issuance of the directive, including a description of the subjects or issues involved, a statement of facts upon

which the notice is being issued, a statement of the remedial actions being sought, and the date by which such remedial actions must be taken.

(d) *Petition for reconsideration.* Within thirty (30) days of service of a notice issued under paragraph (c) of this section, a recipient may file a petition for reconsideration with the Administrator. Unless explicitly stayed or modified by the Administrator, a special directive will remain in effect and must be observed pending review of a petition for reconsideration. Any such petition:

(1) Must be in writing and signed by a recipient's Accountable Executive or equivalent entity;

(2) Must include a brief explanation of why the recipient believes the special directive should not apply to it or why compliance with the special directive is not possible, is not practicable, is unreasonable, or is not in the public interest; and

(3) May include relevant information regarding the factual basis upon which the special directive was issued, information in response to any alleged violation or in mitigation thereof, recommend alternative means of compliance for consideration, and any other information deemed appropriate by the recipient.

(e) *Request for extension.* Upon written request, the Administrator may extend the time for filing a request for reconsideration for good cause shown.

(f) *Filing a petition for reconsideration.* A petition must be submitted to the Office of the Administrator, Federal Transit Administration, using one of the following methods—

(1) Email to FTA, sent to an email address provided in the notice of special directive;

(2) Facsimile to FTA at 202–366–9854; or

(3) Mail to FTA at: FTA, Office of the Administrator, 1200 New Jersey Ave. SE., Washington, DC 20590.

(g) *Processing of petitions for reconsideration*—(1) *General.* Each petition received under this section will be reviewed and disposed of by the Administrator no later than ninety days (90) after receipt of the petition. No hearing, argument or other proceeding will be held directly on a petition before its disposition under this section.

(2) *Grants.* If the Administrator determines the petition contains adequate justification, he or she may grant the petition, in whole or in part.

(3) *Denials.* If the Administrator determines the petition does not justify modifying, rescinding or revoking the directive, in whole or in part, he or she may deny the petition.

(4) *Notification.* The Administrator will issue notification to a recipient of his or her decision.

(h) *Judicial review.* A recipient may seek judicial review in an appropriate United States District Court after a final action of FTA under this section, as provided in 5 U.S.C. 701–706.

§ 670.29 Advisories.

In any instance in which the Administrator determines there are hazards or risks to public transportation, the Administrator may issue an advisory which recommends corrective actions, inspections, conditions, limitations or other actions to avoid or mitigate any hazards or risks. The Administrator will issue notice to recipients of an advisory in the **Federal Register**.

Subpart D—National Public Transportation Safety Plan

§ 670.31 Purpose and contents of the National Public Transportation Safety Plan.

Periodically, FTA will issue a National Public Transportation Safety Plan to improve the safety of all public transportation systems that receive funding under 49 U.S.C. Chapter 53. The National Public Transportation Safety Plan will include the following—

(a) Safety performance criteria for all modes of public transportation, established through public notice and comment;

(b) The definition of *state of good repair;*

(c) Minimum safety performance standards for vehicles in revenue operations, established through public notice and comment;

(d) Minimum performance standards for public transportation operations established through public notice and comment;

(e) The Public Transportation Safety Certification Training Program;

(f) Safety advisories, directives and reports;

(g) Best practices, technical assistance, templates and other tools;

(h) Research, reports, data and information on hazard identification and risk management in public transportation, and guidance regarding the prevention of accidents and incidents in public transportation; and

(i) Any other content as determined by FTA.

[FR Doc. 2016–18920 Filed 8–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 219

[Docket No. 150413360–6558–04]

RIN 0648–BF02

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS' Office of Protected Resources (hereinafter "OPR" or "we" or "our"), upon request of NMFS' Northeast Fisheries Science Center (NEFSC), hereby issues a regulation to govern the unintentional taking of marine mammals incidental to fisheries research conducted in a specified geographical region, over the course of five years. This regulation, which allows for the issuance of a Letter of Authorization for the incidental take of marine mammals during the described activities and specified timeframes, prescribes the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from September 12, 2016 through September 9, 2021.

ADDRESSES: A copy of the NEFSC's application, application addendum, and supporting documents, as well as a list of the references cited in this document, are available on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed below this section (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Executive Summary

This regulation, under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), establishes a framework for authorizing the take of marine mammals incidental to the NEFSC's fisheries research activities in a specified geographical region (the

Atlantic coast region which includes the Northeast U.S. Continental Shelf Large Marine Ecosystem (Northeast LME) and a portion of the Southeast U.S. Continental Shelf Large Marine Ecosystem (Southeast LME)).

The NEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. Depending on the research, the NEFSC's conducts the following types of research: (1) Fishery-independent research directed by NEFSC scientists and conducted onboard NOAA-owned and operated vessels or NOAA-chartered vessels; (2) fishery-independent research directed by cooperating scientists (other agencies, academic institutions, and independent researchers) conducted onboard non-NOAA vessels; and (3) fishery-dependent research conducted onboard commercial fishing vessels, with or without NOAA scientists onboard.

Purpose and Need for This Regulatory Action

OPR received an application from the NEFSC requesting five-year regulations and authorization to take multiple species of marine mammals. We anticipate take to occur in the Atlantic coast region by the following means: Level B harassment incidental to the use of active acoustic devices, visual disturbance of pinnipeds, and Level A harassment, serious injury, or mortality incidental to the use of fisheries research gear. This regulation is valid for five years from the date of issuance. Please see "Background" later in this document for definitions of harassment.

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after notice and public comment, the agency makes certain findings and issues regulations. This regulation contains mitigation, monitoring, and reporting requirements.

Legal Authority for the Regulatory Action

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing the five-year regulations and any subsequent Letters of Authorization.

Summary of Major Provisions Within the Final Regulation

The following provides a summary of some of the major provisions within this regulation for the NEFSC's fisheries research activities in the Atlantic coast region. We have determined that the NEFSC's adherence to the mitigation, monitoring, and reporting measures listed later in this regulation would achieve the least practicable adverse impact on the affected marine mammals. They include:

- Required monitoring of the sampling areas to detect the presence of marine mammals before deployment of pelagic trawl nets, bottom-contact trawl gear, pelagic or demersal longline gear, gillnets, fyke nets, pots, traps, and other gears;
- Required implementation of standard tow durations of not more than 30 minutes to reduce the likelihood of incidental take of marine mammals;
- Required implementation of the mitigation strategy known as the "move-on rule," which incorporates best professional judgment, when necessary during trawl and longline operations;
- Required compliance with applicable vessel speed restrictions; and
- Required compliance with applicable and relevant take reduction plans for marine mammals.

Cost and Benefits

This final rule, specific only to the NEFSC's fishery research activities, is not significant under Executive Order 12866, Regulatory Planning and Review.

Availability of Supporting Information

We provided **SUPPLEMENTARY INFORMATION** in the NPRM for this activity in the **Federal Register** on July 9, 2015 (80 FR 39542), and two corrections to the proposed rulemaking in the **Federal Register** on August 6, 2015 (80 FR 46939), and August 17, 2015 (80 FR 49196). We did not reprint all of that information here in its entirety. Instead, we represent sections from the proposed rule in this document and provide either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the public can find the information. We address any information that has changed since the proposed rule in this document. Additionally, this final rule contains a section that responds to the public comments submitted during the 30-day public comment period and the two extensions of the public comment period.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if OPR finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. OPR has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 17, 2014, OPR received an adequate and complete request from the NEFSC for authorization to take marine mammals incidental to fisheries research activities. We received an initial draft of the request on February 12, 2014, followed by revised drafts on September 19 and October 1, 2014. On December 29, 2014 (79 FR 78065), we published a notice of receipt of the NEFSC's application in the **Federal Register**, requesting comments and information related to the NEFSC request for thirty days. All comments received were considered in development of the proposed rulemaking and are available on the

Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

The NEFSC proposes to conduct fisheries research using the following types of gear: Pelagic trawl gear used at various levels in the water column, bottom-contact trawl gear, pelagic and demersal longlines with multiple hooks, gillnets, fyke nets, dredges, pots, traps, and other gear. If a marine mammal interacts with gear deployed by the NEFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.,* any injury that will likely result in mortality), or mortality. However, there is not sufficient information upon which to base a prediction of what the outcome could be for any particular interaction. Therefore, the NEFSC has pooled the estimated number of incidents of take expected to result from gear interactions, and we have assessed the potential impacts accordingly. The NEFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on the shoreline may also occur, in some locations within the Atlantic coast region, as a result of visual disturbance from vessels conducting NEFSC research. This regulation is valid for five years from the date of issuance.

The NEFSC conducts fisheries research surveys in the Atlantic coast region which spans the United States-Canadian border to Florida. This specified geographic region includes the following subareas: The Gulf of Maine, Georges Bank, Southern New England waters, the Mid-Atlantic Bight, and the coastal waters of northeast Florida. The NEFSC requested authorization to take individuals of 10 species by Level A harassment, serious injury, or mortality (hereafter referred to as M/SI + Level A) and of 19 species by Level B harassment.

Description of the Specified Activity

Overview

The NEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. NEFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. For other types of surveys, cooperating scientists may conduct fishery-independent research onboard non-NOAA vessels. Finally, the NEFSC sponsors some fishery-dependent research conducted onboard commercial fishing vessels, with or without NEFSC scientists onboard.

The NEFSC plans to administer and conduct approximately 48 survey programs over the five-year period. The gear types used fall into several categories: Pelagic trawl gear used at various levels in the water column; bottom-contact trawl gear; pelagic and demersal longlines; gillnets; fyke nets; pots; traps; and other gear. The use of pelagic and bottom trawl nets, gillnets, fyke nets, and pelagic longline gears are likely to result in interactions with marine mammals. The majority of these surveys also use active acoustic devices.

The federal government has a responsibility to conserve and protect living marine resources in U.S. waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed fishery management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research aims at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The NEFSC is the research arm of NMFS in the greater Atlantic Ocean region of the United States. The NEFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in Northeast and Southeast LMEs and provides scientific information to support the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, and numerous other domestic and international fisheries management organizations.

Dates and Duration

The specified activity may occur at any time during the five-year period of validity of the issued regulation. Dates and duration of individual surveys are inherently uncertain, based on congressional funding levels for the NEFSC, weather conditions, or ship contingencies. In addition, the NEFSC designs the cooperative research program to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects undergo an annual competitive selection process to determine funding for projects based on proposals developed by many independent researchers and fishing industry participants. NEFSC survey activity occurs during most months of the year; however, most trawl surveys occur during the spring, summer, and fall. Longline surveys occur either biannually in the spring or annually in the summer and a small number of gillnet surveys occur annually in the summer.

Specified Geographical Region

The NEFSC operates within the Atlantic coast region, which was described in detail in the notice of proposed rulemaking for this activity in the **Federal Register** on July 9, 2015 (80 FR 39544–39546). We refer the public to that document for further information.

Detailed Description of Activities

We provided a detailed description of the NEFSC's planned research activities, gear types and active acoustic sound sources used in the notice of proposed rulemaking (80 FR 39546–39560; July 9, 2015) and do not repeat that information here. There are no changes to the specified activities, gear types, or active acoustic sound sources described in that document.

Comments and Responses

We published a notice of proposed rulemaking in the **Federal Register** on July 9, 2015 (80 FR 39542) and requested comments and information from the public. We also published two corrections and extensions of the public comment period for the proposed rulemaking in the **Federal Register** on August 6, 2015 (80 FR 46939), and August 17, 2015 (80 FR 49196). During the 70-day public comment period, we received letters from the Marine Mammal Commission (Commission), a joint letter from the Humane Society of the United States and Whale and Dolphin Conservation (HSUS/WDC), and comments from two private citizens which were not germane to the proposed action. We provide the comments and our responses here, and we have posted those comments on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm* and on the federal e-Rulemaking Portal at *www.regulations.gov* (enter 0648–BF02 in the "Search" box and scroll down to the Comments section). Please see the comment letters for the full rationale behind our response to the recommendations.

Comment 1: The Commission recommends that OPR develop criteria and guidance for determining when prospective applicants should request taking by Level B harassment incidental to the use of sub-bottom profilers, echosounders, and other sonars, stating that we should follow a consistent approach in assessing the potential for taking by Level B harassment from active acoustic systems.

Response: OPR agrees with the Commission's recommendation. Generally speaking, there has been a lack of information and scientific consensus regarding the potential effects of electromechanical sources (including scientific sonars) on marine mammals, which may differ depending on the acoustic system and species in question as well as the environment in which an applicant operates the system. We are currently working to ensure that our consideration on the use of these types of active acoustic sources is consistent and look forward to the Commission's advice as we develop guidance as recommended.

Comment 2: The Commission recommends that the OPR require the NEFSC to estimate the numbers of marine mammals taken by Level B harassment incidental to use of active acoustic sources (*e.g.,* echosounders) based on the 120-decibel (dB) rather than the 160-dB root mean square (rms) threshold. Please see the notice of proposed rulemaking (80 FR 39542; July 9, 2015) for a discussion related to acoustic terminology and thresholds. In addition, the Commission recommends that the OPR formulate a strategy for updating behavioral thresholds for all types of sound sources (*i.e.,* impulsive and non-impulsive) incorporating new data regarding behavioral thresholds and finalize the thresholds within the next year or two.

Response: Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in sound levels (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Thus, echosounder signals are not continuous sounds but rather intermittent sounds. One can further define intermittent sounds as either impulsive or non-impulsive. Impulsive sounds have been defined as sounds which are typically transient, brief (less than one second), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). Echosounder signals also have durations that are typically very brief (less than one second), with temporal characteristics that more closely resemble those of impulsive sounds than non-impulsive sounds, which typically have more gradual rise times and longer decays (ANSI, 1995; NIOSH, 1998). With regard to behavioral thresholds, we consider the temporal and spectral characteristics of echosounder signals to more closely resemble those of an impulse sound than a continuous sound.

The Commission suggests that, for certain sources considered here, the interval between pulses would not be discernible to the animal, rendering them effectively continuous. However, echosounders emit pulses in a similar fashion as odontocete echolocation click trains. Research indicates that marine mammals, in general, have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov, 1995; Mooney *et al.,* 2009), especially for species with echolocation capabilities. Therefore, it is highly unlikely that marine mammals would perceive echosounder signals as being continuous. The Commission provides numerous references purporting to demonstrate behavioral responses by marine mammals to received levels of sound below 160 dB rms from sources with characteristics similar to those used by the NEFSC. However, the vast majority of these references concern acoustic deterrent devices, which we do not believe are similar to the NEFSC's acoustic sources.

In conclusion, echosounder signals are intermittent rather than continuous signals, and the fine temporal resolution of the marine mammal auditory system allows them to perceive these sounds as such. Further, the physical characteristics of these signals indicate a greater similarity to the way that intermittent, impulsive sounds are received. Therefore, the 160-dB threshold (typically associated with impulsive sources) is more appropriate than the 120-dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources. This response represents the consensus opinion of acoustics experts from NMFS' OPR and Office of Science and Technology.

Finally, we agree with the Commission's recommendation to revise existing acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources and are currently in the process of producing such revisions (see 80 FR 45642, July 31, 2015). NOAA recognizes, as new science becomes available, that our current categorizations (*i.e.,* impulse versus continuous) may not fully encompass the complexity associated with behavioral responses (*e.g.,* context) and are working toward addressing these issues in future acoustic guidance. With respect to updating behavioral thresholds for different types of sound sources as soon as possible, OPR agrees with the Commission's recommendation. Due to the complexity and variability of marine mammal behavioral responses, NOAA will continue to work on developing guidance regarding the effects of anthropogenic sound on marine mammal behavior.

Comment 3: The Commission notes that we have delineated two categories of acoustic sources, largely based on frequency, with those sources operating at frequencies greater than the known hearing ranges of any marine mammal (*i.e.,* greater than 180 kHz) lacking the potential to cause disruption of behavioral patterns. The Commission recommends that we review the recent scientific literature on acoustic sources with frequencies above 180 kHz (*i.e.,* Deng *et al.,* 2014; Hastie *et al.,* 2014) and incorporate those findings into our criteria and guidance for determining when prospective applicants should request authorization for taking by Level B harassment from the use of echosounders, sonars, and sub-bottom profilers.

Response: We are aware of the referenced literature and considered that information in our notice of proposed rulemaking (80 FR 39558, July 9, 2015). In general, the referenced work indicates that "sub-harmonics" could be "detectable" by certain species at distances up to several hundred meters. However, this detectability is in reference to ambient noise, not to OPR's established 160-dB threshold for assessing the potential for incidental take for these sources (see also our response to Comment 2). Source levels of the secondary peaks considered in these studies—those within the hearing range of some marine mammals—range from 135–166 dB, meaning that these sub-harmonics either would be below the threshold for behavioral harassment or would attenuate to such a level within a few meters. Beyond these important study details, these high-frequency (*i.e.,* Category 1) sources and any energy they may produce below the primary frequency that could be audible to marine mammals would be dominated by a few primary sources (*e.g.,* EK60) that are operated near-continuously—much like other Category

2 sources considered in our assessment of potential incidental take from the NEFSC's use of active acoustic sources—and the potential range above threshold would be so small as to essentially discount them.

Comment 4: HSUS/WDC provided comments on OPR's process for evaluating and adopting the NEFSC's Draft Programmatic Environmental Assessment (PEA) as described in the notice of proposed rulemaking. The commenters state that ". . . [NMFS] has 'evaluated the Draft EA and [we] are proposing to adopt it,' which would seem to indicate that no or only insubstantial changes were made, despite substantial critique of the Draft PEA. Moreover, NMFS appears to have finalized the Draft PEA as it states that [HSUS/WDC's] comments were 'considered' in finalizing the PEA."

Response: OPR would like to clarify the process for evaluating the NEFSC's Draft PEA. First, we clearly state in our notice of proposed rulemaking (80 FR 39600, July 9, 2015) that the NEFSC, not NMFS' OPR, prepared the Draft PEA in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508). The NEFSC released the Draft PEA for public review and comment in the **Federal Register** on December 29, 2014 (79 FR 78061); considered public comments in the interim; and finalized their PEA in November 2015. The NEFSC addresses public comments on the Draft PEA—including those submitted by HSUS/WDC in Section 1.5 of the Final PEA which is available on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

Second, for the purposes of determining whether the issuance of regulations and a subsequent Letter of Authorization (LOA) would have a significant effect on the human environment, OPR stated that we would independently evaluate the NEFSC's Draft PEA, propose to adopt it (*i.e.,* the final PEA that addresses public comments received on the NEFSC's Draft PEA and our notice of proposed rulemaking); or prepare a separate NEPA analysis and incorporate relevant portions of NEFSC's Draft PEA by reference (80 FR 39600, July 9, 2015). Thus, the commenters' statement that ". . . NMFS appears to have finalized the Draft PEA as it states that our comments were "considered" in finalizing the PEA," is inaccurate, as the NEFSC had not finalized the Draft PEA at the time of publishing the proposed rulemaking in July 2015.

Comment 5: HSUS/WDC commented that "it would be important for commenters at this stage to understand whether the agency was simply adopting status quo mitigation measures discussed in the preferred alternative of the DPEA or including additional conservation measures for this permit. It would also be helpful to compare the data used in assessing status of, and impacts to, marine mammals discussed in the Draft PEA and which we critiqued in our comments. Yet there is no means of comparing what was proposed in the draft to what NMFS says it will adopt in a final form to allow understanding of whether changes were made in response to comments."

Response: See our Response to Comment 4. The NEFSC adhered to the procedural requirements of NEPA; the CEQ regulations for implementing NEPA, and NOAA Administrative Order 216–6 in developing the Final PEA. The connected federal action covered under the NEFSC's Final PEA is the issuance of regulations and subsequent Letter of Authorization (LOA) for the incidental taking of marine mammals under the MMPA. Under section 101(a)(5)(A) of the MMPA, OPR must consider a reasonable range of mitigation measures that may reduce the impact on marine mammals among other factors. However, some of the additional measures considered in the NEFSC's Alternative 3 could prevent them from maintaining the scientific integrity of its research programs. The NEFSC would normally exclude these measures from consideration in the Chapter 1 of the Final PEA as they would not meet the NEFSC's purpose and need under NEPA. Again, the NEFSC provides information on how they considered and addressed public comments in the Final PEA in Sections 1.5 of that document. Also, Sections 4.4 and 4.6 describe the NEFSC's consideration of Alternative 3 which includes a suite of mitigation measures that the NEFSC did not propose to implement as a part of its Preferred Action under Alternative 2.

Comment 6: HSUS/WDC commented on a discrepancy between Table 3 and Table 20 in the notice of proposed rulemaking for the potential biological removal (PBR) level for short-beaked common dolphins.

Response: We thank the commenters for their review and have corrected the PBR value for short-beaked common dolphins to show 1,125 in Table 9 of this document instead of 170, which is the average annual human caused mortality estimate. The information provided in Table 3 in the notice of proposed rulemaking for short-beaked common dolphins is correct and has not changed.

Comment 7: HSUS/WDC commented that NMFS should re-examine impacts to bottlenose dolphin stocks since the NEFSC's research plans have not changed from what the NEFSC presented in the original application for an LOA and the Draft PEA. The commenters note that NMFS reduced the number of impacted bottlenose dolphin stocks to three: Western North Atlantic (WNA) Offshore, WNA Northern Migratory Coastal and WNA Southern Migratory Coastal rather than expand the list to consideration of all coastal bottlenose dolphin stocks as HSUS/WDC suggested in their 2014 comments on the original application for an LOA and the Draft PEA.

Response: The NEFSC considered HSUS/WDC's public comments on the likelihood of their research activities affecting certain stocks of bottlenose dolphins and reanalyzed the locations of their research activities relative to the ranges of estuarine and coastal bottlenose dolphin stocks in the Southeast LME within the Atlantic coast region. Based on that reanalysis and consideration of public comments, the NEFSC determined that the impact of their coastal research activities, namely the Apex Predators Bottom Longline Coastal Shark and the Cooperative Atlantic States Shark Pupping and Nursery Ground (COASTSPAN) Surveys, within the Southeast LME was smaller than the information presented in the original 2014 application for an LOA and the Draft PEA.

The NEFSC's revised analysis revealed that the Apex Predators Bottom Longline Coastal Shark Survey intersects with the estimated ranges of three stocks of bottlenose dolphins: The WNA Offshore; the WNA Northern Migratory Coastal; and the WNA Southern Migratory Coastal stocks. This survey generally samples in water depths greater than 20 m (66 ft) (*i.e.,* outside the typical range of estuarine dolphin stocks) and does not intersect with the remaining three coastal stocks in question: The WNA South Carolina-Georgia Coastal; the WNA Northern Florida Coastal; and the WNA Central Florida Coastal. The NEFSC determined that a take request was not warranted based on the following factors including: (1) The efficacy of the planned mitigation and monitoring measures in reducing the effects of the specified activity to the level of least practicable adverse impact; (2) the survey's location (offshore in water depths greater than 20 m [66 ft] depth) which has limited overlap with the primary habitat of the coastal morphotype of bottlenose dolphins; (3) the total survey effort (less than 50 days annually); (4) seasonality (spring); and (5) survey frequency (conducted every two to three years).

In assessing the impacts of the COASTSPAN survey, the NEFSC did not request take from the estuarine stocks of bottlenose dolphins in North Carolina, South Carolina, Georgia, and Florida, due to limited survey effort in estuarine waters. As discussed in the notice of proposed rulemaking (80 FR 39587, July 9, 2015), in the future, if there is a bottlenose dolphin take from one of the estuarine stocks (to be determined by genetic sampling), the NEFSC will consult with OPR and the Atlantic Bottlenose Dolphin Take Reduction Team under the Adaptive Management provisions of the final rule to discuss appropriate modifications to COASTSPAN survey protocols.

NMFS provided a revised accounting of those coastal bottlenose dolphin stocks potentially impacted by the NEFSC's research activities within the 2015 Addendum to the NEFSC's 2014 LOA Application, available at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm* which NMFS announced in the "Availability" section of the **Federal Register** notice of proposed rulemaking, 80 FR 39542, July 9, 2015. Table 20 in the notice of proposed rulemaking (80 FR 39595, July 9, 2015) shows the total estimated take by mortality, serious injury, and Level A harassment for the three stocks. The NEFSC take request for bottlenose dolphins includes two in trawl gear, five in gillnet gear, one in longline gear, and three for the potential take of one unidentified delphinid by trawl, gillnet, and/or longline for the WNA Offshore, the WNA Northern Migratory Coastal, and the WNA Southern Migratory Coastal stocks during the five-year authorization period.

The NEFSC notes in their final PEA that the Southeast Fisheries Science Center's (SEFSC) research activities could also potentially interact with the some of the same offshore and coastal stocks in the Atlantic coast region. The SEFSC is currently developing a Draft PEA and LOA application concerning fisheries research under its responsibility within the Atlantic coast region. The SEFSC's Draft PEA will also include consideration of coastal and estuarine bottlenose dolphin stocks within their future LOA application. This will include consideration of the NEFSC's research activities that occur in the Atlantic coast region. Thus, NMFS will be able to consider the combined impacts of incidental take related to NEFSC and SEFSC research activities on all bottlenose dolphin stocks within the Atlantic coast region.

Comment 8: HSUS/WDC commented that the NEFSC's LOA application did not consider the impact of an unusual mortality event (UME) in the northwest Atlantic Ocean on the overall abundance (and PBR for each stock) of the WNA Northern and Southern Migratory Coastal stocks and the resident populations of the South Carolina/Georgia Coastal, North Florida Coastal and Central Florida Coastal stocks. They suggested that NMFS should reconsider the impacts of additional research-related takes on those stocks.

Response: NMFS considered UMEs within the notice of proposed rulemaking for this activity in the **Federal Register** on July 9, 2015 (80 FR 39569). See our Response to Comment 7 with respect to the lack of anticipated impacts related to NEFSC research activities on the WNA South Carolina-Georgia Coastal, the WNA Northern Florida Coastal, and the WNA Central Florida Coastal stocks of bottlenose dolphins.

The dolphin stocks that may potentially occur within the vicinity of NEFSC coastal research activities include: The WNA Offshore, the WNA Northern Migratory Coastal, the Southern Migratory Coastal, and the WNA Southern Migratory Coastal stocks. However, specific information is lacking on which particular population or populations are affected by the UME (NMFS, 2015).

As discussed in the notice of proposed rulemaking and in the analyses in other referenced documents, NMFS has evaluated the potential effects of the NEFSC's research activities on a number of marine mammal species, including impacts to bottlenose dolphins stocks subject to the current UME and concludes that NEFSC's activities will have a negligible impact on those stocks.

Comment 9: HSUS/WDC expressed concern that we may not be appropriately accounting for behavioral impacts incidental to the NEFSC's use of active acoustic sources and noted that such impacts could occur at greater distances than considered in our analysis. The commenters discuss the results from Risch *et al.* (2012) and suggest that it is likely that disturbance from some of the NEFSC's active acoustic sources would be more widespread than projected thus underestimating the occurrence of Level B harassment.

Response: See our Response to Comment 2. Beyond consideration of a different threshold for assessing potential behavioral impacts, it is not clear what additional or different approaches to impact assessment HSUS *et al.* might recommend. Absent a specific recommendation to consider, we believe that our approach to assessing the potential for behavioral harassment incidental to the NEFSC's use of active acoustics is appropriate. NMFS' assessment of acoustic impacts and the associated take estimates represent the consensus opinion of acoustics experts from NMFS' Office of Protected Resources and Office of Science and Technology.

The Risch *et al.* (2012) study documented reductions in humpback whale vocalizations in the Stellwagen Bank National Marine Sanctuary concurrent with transmissions of the Ocean Acoustic Waveguide Remote Sensing (OAWRS) low-frequency fish sensor system at distances of 200 km from the source. The recorded OAWRS produced a series of frequency modulated pulses (between 0.4 and 1 kHZ, much lower in frequency, longer in duration, with the potential to mask mysticete vocalizations at longer distances than the predominant frequencies produced by the NEFSC's active acoustic sources which attenuate at shorter distances from the source) and the signal received levels ranged from 88 to 110 dB re: 1 μPa (Risch *et al.*, 2012). The authors hypothesized that individuals did not leave the area but instead ceased singing and noted that the duration and frequency range of the OAWRS signals (a novel sound to the whales) were similar to those of natural humpback whale song components used during mating (Risch *et al.*, 2012). However, Gong *et al.* (2014), disputes these findings, suggesting that (Risch *et al.*, 2012) mistook natural variations in humpback whale song occurrence for changes caused by OAWRS activity approximately 200 km away. Risch *et al.* (2014) responded to Gong *et al.* (2014) and highlighted the context-dependent nature of behavioral responses to acoustic stressors.

Furthermore, the three predominant acoustic sources used by the NEFSC produce frequencies above the known functional hearing ranges for mysticetes. Mysticetes, including the humpback whale, are not likely to perceive most signals produced through the NEFSC's use of active acoustic sources and are therefore unlikely to behaviorally respond in a manner considered take. The NEFSC's initial estimates of Level B harassment due to acoustic sources did not consider functional hearing ranges and are therefore overestimates for mysticetes. For the final rule, NMFS has considered functional hearing and has revised the expected take for mysticetes accordingly.

Comment 10: HSUS/WDC commented on NMFS corrections to the proposed rule that increased the projected mortality estimates for gray and harbor seals and sought clarification on the proposed increase in take for both species.

Response: The NEFSC reported an interaction with one gray seal during a Spring Bottom Trawl Survey in April 2015, after releasing their LOA application and Draft PEA for public comment. In order to account for the potential for future gear interaction indicated by this event, NMFS included this information within the notice of proposed rulemaking (80 FR 39582, July 9, 2015; see Table 4, footnote 2). NMFS then used this information to adjust the estimated take by mortality for gray seals and harbor seals (a species with potential similar gear vulnerability as the gray seal) accordingly in the **Federal Register** notice of correction (80 FR 46939, August 6, 2015).

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, "and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses." NMFS provided a full description of the planned mitigation measures, including background discussion related to certain elements of the mitigation plan, in the notice of proposed rulemaking (80 FR 39595, July 9, 2015). Please see that document for more detail.

General Measures

Coordination and communication—We require that the NEFSC take all necessary measures to coordinate and communicate in advance of each specific survey with NOAA's Office of Marine and Aviation Operations (OMAO), or other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve describing all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. The NEFSC will coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (commanding officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The chief scientist (CS) will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

For all NEFSC-affiliated research projects and vessels, the vessel coordinator and center director reviews cruise instructions and protocols for avoiding adverse interactions with protected species. If the research is conducted on a NOAA vessel, the Commanding Officer finalizes these instructions. If any inconsistencies or deficiencies are found, the written instructions will be made fully consistent with the Northeast Fisheries Observer Program (NEFOP) training materials and any guidance on decision-making that arises out of the training opportunities described earlier. In addition, the NEFSC will review informational placards and reporting procedures and update them as necessary for consistency and accuracy. Many research cruises already include pre-sail review of protected species protocols. The NEFSC will require pre-sail briefings before all research cruises, including those conducted by cooperating partners, as part of its continuing research program.

Protected species training—In an effort to help standardize and further emphasize the importance of protected species information, the NEFSC will implement a formalized protected species training program for all crew members as part of its continuing research program that will be required for all NEFSC-affiliated research projects, including cooperative research partners. The NEFSC will conduct training programs on a regular basis which will include topics such as monitoring and sighting protocols, species identification, decision-making factors for avoiding take, procedures for handling and documenting protected species caught in research gear, and reporting requirements. Required training will occur through participation in protected species training programs developed by the regional commercial Fisheries Observer Program, which will typically be the NEFOP.

All NEFSC research crew members that may be assigned to monitor for the presence of marine mammals during future surveys will be required to attend an initial training course and refresher courses annually or as necessary. The implementation of this new training program will formalize and standardize the information provided to all crew that might experience protected species interactions during research activities.

Vessel speed—Vessel speed during active sampling rarely exceeds 5 kt, with typical speeds being 2 to 4 kt. Transit speeds vary from 6 to 14 kt but average 10 kt. These low vessel speeds minimize the potential for ship strike (see "Potential Effects of the Specified Activity on Marine Mammals and Their Habitat" for an in-depth discussion of ship strike). At any time during a survey or in transit, if a crew member standing watch or dedicated marine mammal observer sights marine mammals that may intersect with the vessel course, that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

Other gears—The NEFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (*e.g.,* plankton nets, video camera and ROV deployments) are not considered to pose any risk to marine mammals and are therefore not subject to specific mitigation measures. In addition, specific aspects of gear design, survey protocols (*e.g.,* number of hooks), and limited frequency of use indicate that certain types of gears that may otherwise be expected to have the potential to result in take of marine mammals do not pose significant risk to certain species of marine mammals (*e.g.,* large whales interactions with NEFSC longline gears) and are not subject to specific mitigation measures due to the low level of survey effort and small survey footprint relative to that of commercial fisheries. However, at all times when the NEFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

Handling procedures—The NEFSC will implement a number of handling protocols to minimize potential harm to marine mammals that are incidentally taken during the course of fisheries research activities. In general, protocols have already been prepared for use on commercial fishing vessels. Because incidental take of marine mammals in fishing gear is similar for commercial fisheries and research surveys, NEFSC proposes to adopt these protocols, which are expected to increase post-release survival. In general, following a "common sense" approach to handling captured or entangled marine mammals will present the best chance of minimizing injury to the animal and of decreasing risks to scientists and vessel crew. Handling or disentangling marine mammals carries inherent safety risks, and using best professional judgment and ensuring human safety is paramount. The NEFSC protected species training programs will include procedures for handling and documenting protected species caught in research gear, and reporting requirements. The CS and appropriate members of the research crews will also be trained using the same monitoring, data collection, and reporting protocols for protected species as is required by the NEFOP.

Trawl Survey Visual Monitoring and Operational Protocols

The mitigation requirements described here are applicable to all beam, mid-water, and bottom trawl operations conducted by the NEFSC.

Visual monitoring—The OOD, CS (or other designated member of the Scientific Party), and crew standing watch on the bridge visually scan for marine mammals (and other protected species) during all daytime operations. Marine mammal watches will be conducted by scanning the surrounding waters with bridge binoculars to survey the area upon arrival at the station, during visual and sonar reconnaissance of the trawl line to look for potential hazards (*e.g.*, commercial fishing gear, unsuitable bottom for trawling, *etc.*), and while the gear is deployed. During nighttime operations, visual observation will be conducted using the naked eye, to the extent allowed by available vessel lighting.

Operational procedures—The primary purpose of conducting visual monitoring period is to implement the "move-on rule." If marine mammals are sighted around the vessel before setting the gear, the OOD may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. During daytime trawl operations, research trawl gear is not deployed if marine mammals have been sighted near the ship unless those animals do not appear to be in danger of interactions with the trawl, as determined by the judgment of the OOD and CS. The efficacy of the move-on rule is limited during night time trawl operations or other periods of limited visibility. However, operational lighting from the vessel illuminates the water in the immediate vicinity of the vessel during gear setting and retrieval.

After moving on, if marine mammals are still visible from the vessel and appear to be at risk, the OOD may decide to move the vessel again or skip the sampling station. The OOD will consult with the CS or other designated scientist (identified prior to the voyage and noted on the cruise plan) and other experienced crew as necessary to determine the best strategy to avoid potential takes of these species. Strategies are based on the species encountered, their numbers and behavior, their position and vector relative to the vessel, and other factors. For instance, a whale transiting through the area and heading away from the vessel may not require any move, or may require only a short move from the initial sampling site, while a pod of dolphins gathered around the vessel may require a longer move from the initial sampling site or possibly cancellation of the station if the dolphins follow the vessel. If trawling operations have been delayed because of the presence of marine mammals, then the vessel resumes trawl operations (when practical) only when the animals have not been sighted near the vessel or otherwise determined to no longer be at risk. This decision is at the discretion of the OOD and is situationally dependent.

In general, trawl operations will be conducted immediately upon arrival on station in order to minimize the time during which marine mammals may become attracted to the vessel. However, in some cases it will be necessary to conduct small net tows (*e.g.*, bongo net) prior to deploying trawl gear in order to avoid trawling through extremely high densities of gelatinous zooplankton that can damage trawl gear.

Once the trawl net is in the water, the OOD, CS, and/or crew standing watch will continue to visually monitor the surrounding waters and will maintain a lookout for marine mammal presence as far away as environmental conditions allow.

If marine mammals are sighted before the gear is fully retrieved, the most appropriate response to avoid marine mammal interaction will be determined by the professional judgment of the CS, watch leader, OOD and other experienced crew as necessary. This judgment will be based on past experience operating trawl gears around marine mammals (*i.e.*, best professional judgment) and on NEFSC training sessions that will facilitate dissemination of expertise operating in these situations (*e.g.*, factors that contribute to marine mammal gear interactions and those that aid in successfully avoiding such events). Best professional judgment takes into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (*e.g.*, net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course. We recognize that it is not possible to dictate in advance the exact course of action that the OOD or CS should take in any given event involving the presence of marine mammals in proximity to an ongoing trawl tow, given the sheer number of potential variables, combinations of variables that may determine the appropriate course of action, and the need to consider human safety in the operation of fishing gear at sea. Nevertheless, we require a full accounting of factors that shape both successful and unsuccessful decisions and these details will be fed back into NEFSC training efforts and ultimately help to refine the best professional judgment that determines the course of action taken in any given scenario (see further discussion in "Monitoring and Reporting").

Speed and course alterations, Tow duration and direction—The vessel's speed during active sampling with trawl nets will not exceed 5 kt. Typical towing speeds are 2–4 kt. Transit speed between active sampling stations will range from 10–12 kt, except in areas where vessel speeds are regulated to lower speeds. When operating in North Atlantic right whale Seasonal Management Areas, Dynamic Management Areas, or in the vicinity of right whales or surface active groups of large baleen whales the vessel's speed will not exceed 10 kt. Further, vessels will reduce speed and change course in the vicinity of resting groups of large whales.

As noted earlier, if marine mammals are sighted prior to deployment of the trawl net, the vessel may be moved away from the animals to a new station at the discretion of the OOD. Also, at any time during a survey or in transit, any crew member that sights marine mammals that may intersect with the vessel course will immediately communicate their presence to the bridge for appropriate course alteration or speed reduction as possible to avoid incidental collisions.

Standard survey protocols that are expected to lessen the likelihood of marine mammal interactions include standardized tow durations and distances. Standard tow durations of not more than 30 minutes at the target depth will be implemented, excluding deployment and retrieval time (which may require an additional 30 minutes, depending on target depth), to reduce the likelihood of attracting and incidentally taking marine mammals. Short tow durations decrease the opportunity for marine mammals to find the vessel and investigate. The exceptions to the 30-minute tow duration are the Atlantic Herring Acoustic Pelagic Trawl Survey and the Deep-Water Biodiversity Survey where the total time in the water (deployment, fishing, and haul-back) are 40 to 60 minutes and 180 minutes, respectively.

Trawl tow distances will be less than 3 nm—typically 1–2 nm, depending on the specific survey and trawl speed—which NMFS expects to reduce the likelihood of attracting and incidentally taking marine mammals.

Gear maintenance—The crew will be careful when emptying the trawl to avoid damage to marine mammals that may be caught in the gear but are not visible upon retrieval. The gear will be emptied as quickly as possible after retrieval in order to determine whether or not marine mammals are present. The vessel's crew will clean trawl nets prior to deployment to remove prey items that might attract marine mammals. Catch volumes are typically small with every attempt made to collect all organisms caught in the trawl.

Dredge Survey Visual Monitoring and Operational Protocols

The mitigation requirements described here are applicable to all hydraulic, New Bedford-type, commercial, and Naturalist dredge operations conducted by the NEFSC.

Visual monitoring—Visual monitoring requirements for all dredge gears are the same as those described above for trawl surveys. Please see that section for full details of the visual monitoring and "move-on" protocols. However, care will be taken when emptying the dredge to avoid damage to protected species that may be caught in the gear but are not visible upon retrieval. The gear will be emptied as quickly as possible after retrieval in order to determine whether or not protected species are present.

Tow duration and direction—Standard dredge durations are 15 minutes or less, excluding deployment and retrieval time, to reduce the likelihood of attracting and incidentally taking protected species.

Longline Gear Visual Monitoring and Operational Protocols

Visual monitoring—Visual monitoring requirements for pelagic or demersal longline surveys are the same as those described above for trawl surveys. Please see that section for full details.

Operational procedures—Prior to setting the gear, the OOD, CS, and crew visually scan the waters surrounding the vessel for protected species at least 30 minutes before deploying the longline gear. This typically occurs during transit through the setting area and then returning back to the starting point. Longline sets may be delayed if marine mammals have been detected near the vessel in the 30 minutes prior to setting the gear.

For the Apex Predators Bottom Longline Coastal Shark Survey, which has a separate survey protocol from the COASTSPAN and NEFOP Observer Bottom Longline Training surveys conducted by NEFSC, the OOD, CS, and crew use a one nautical mile radius around the vessel to guide the decision on whether marine mammals are at risk of interactions before deploying the gear. The vessel may be moved to a new location if marine mammals are present and the OOD uses professional judgment to minimize the risk to marine mammals from potential gear interactions.

The OOD, CS, and crew standing watch will continually monitor the gear to look for hooked or entangled marine mammals and other protected species and will release the animal following standard handling and release protocols for marine mammals.

The NEFSC has established standard soak times of three hours for bottom longline and two to five hours for pelagic longline surveys. The CS will ensure that soak times do not exceed five hours, except in cases where weather or mechanical difficulty delay gear retrieval.

NEFSC longline protocols specifically prohibit chumming (releasing additional bait to attract target species to the gear). Bait is removed from hooks during retrieval and retained on the vessel until all gear is removed from the area. The crew will not discard offal or spent bait while longline gear is in the water to reduce the risk of marine mammals detecting the vessel or being attracted to the area.

If marine mammals are detected while longline gear is in the water, the OOD exercises similar judgment and discretion to avoid incidental take of marine mammals as described for trawl gear. The species, number, and behavior of the marine mammals are considered along with the status of the ship and gear, weather and sea conditions, and crew safety factors.

If marine mammals are present during setting operations, immediate retrieval or halting the setting operations may be warranted. If setting operations have been halted due to the presence of marine mammals, resumption of setting will not begin until no marine mammals have been observed for at least 15 minutes. When visibility allows, the OOD, CS, and crew standing watch will conduct set checks every 15 minutes to look for hooked, or entangled marine mammals.

If marine mammals are present during retrieval operations, haul-back will be postponed until the OOD determines that it is safe to proceed. If haul-back operations have been halted due to the presence of marine mammals, resumption of haul-back would begin when no marine mammals have been observed for at least 15 minutes. When visibility allows, the OOD, CS, and crew standing watch will conduct set checks every 15 minutes to look for hooked, trapped, or entangled marine mammals.

Gillnet Visual Monitoring and Operational Protocols

Visual monitoring—The monitoring procedures for gillnets are similar to those described for trawl gear. The NEFSC does not propose to use pelagic gillnets in any survey.

Operational procedures—Gillnets are not deployed if marine mammals have been sighted on arrival at the sample site. The exception is for animals that, because of their behavior, travel vector or other factors, do not appear to be at risk of interaction with the gillnet gear. If no marine mammals are present, the gear is set and monitored during the soak. If a marine mammal is sighted during the soak and appears to be at risk of interaction with the gear, then the gear is pulled immediately.

For the COASTSPAN surveys, which are performed in areas where estuarine dolphins may occur, the NEFSC will actively monitor for potential bottlenose dolphin entanglements by hand checking the gillnet gear every 20 minutes by lifting the foot net. Also, in the unexpected case of a bottlenose dolphin entanglement, the NEFSC would request and arrange for expedited genetic sampling in order to determine the stock and would photograph the dorsal fin and submit to the Southeast Stranding Coordinator for identification/matching to bottlenose dolphins in the Mid-Atlantic Bottlenose Dolphin Photo-identification Catalog.

On the NEFOP Observer Gillnet Training cruises, which occur in areas covered by the HPTRP, acoustic pingers and weak links are used on all gillnets consistent with the Harbor Porpoise Take Reduction Plan regulations at (50 CFR 229.33) for commercial fisheries to reduce marine mammal bycatch. Under the HPTRP, gillnet gear used in specific areas during specific times are required to be equipped with pingers. We discuss the use of pingers and their acoustic characteristics later within the subsection titled "Cooperative Research Visual Monitoring and Operational Protocols."

All NEFOP protocols concerning monitoring and reporting protected species interactions are followed as per the current NEFOP Observer Manual (available on the internet at *http://www.nefsc.noaa.gov/fsb/manuals/2013/NEFSC_Observer_Program_Manual.pdf*). The soak duration time is 12 to 24 hours. Communication with the NEFOP Training Lead and the vessel captain occurs within 24 to 48 hours prior to setting of gear. During these communications, the NEFOP Training Lead and Captain decide when to set the gear, specifically taking into account any possible weather delays to avoid a long soak period. They do not deploy the gear if a significant weather delay is expected that would increase the preferred soak duration to greater than 24 hours. In those situations, the gear set times will be delayed.

Fyke Net Visual Monitoring and Operational Protocols

Visual monitoring—Fyke nets are normally set inshore by small boat crews, who will visually survey areas prior to deploying the nets. Monitoring is done prior to setting and during net retrieval which is conducted every 12 to 24-hours. If marine mammals are in close proximity (approximately 100 m) of the setting location, the field team will make a determination if the set location needs to be moved. If marine mammals are observed to interact with the gear during the setting, the crew will lift and remove the gear from the water.

Operational procedures—A 2-m fyke net will be deployed with a marine mammal excluder device that reduces the effective mouth opening to less than 15 cm. The 1-m fyke net does not require an excluder device as the opening is 12 cm. These small openings will prevent marine mammals from entering the nets.

Beach Seine Visual Monitoring and Operational Protocols

Visual monitoring—Prior to setting the seine nets, researchers will visually survey the area for marine mammals. They will also observe for marine mammals continuously during sampling.

Operational procedures—Seines are deployed with one end held on shore by a crew member and the net slowly deployed by boat in an arc and then retrieved by pulling both ends onto shore. Typical seine hauls are less than 15 minutes with the resulting catch sampled and released. Scientists will look as far as field of view permits from the beach in the general sampling area before the net is fished and will not deploy if marine mammals are present. If marine mammals are observed to be interacting with the gear, it will be lifted and removed from the water.

Rotary Screw Trap Visual Monitoring and Operational Protocols

Visual monitoring—Sites are visually surveyed for marine mammals prior to submerging the gear in the water channel. The traps remain in the water for an extended period of time and sampling crews tend the traps on a daily basis. The researchers will modify, delay, or conclude the sampling period depending on the numbers of marine mammals nearby and their potential for interacting with the gear as determined by the professional judgment of the researchers.

Operational procedures—Under most conditions the live car (*i.e.,* catch holding pen) is about 75 percent full of water, which would allow any trapped mammals to breath until release from the trap. Rotary screw trap tending schedules are adjusted according to conditions of the river/estuary and threats to protected species (*i.e.,* presence of ESA-listed fish or marine mammals in the area). If capture occurs, the animal is temporarily retained in a live tank and released as soon as possible.

Cooperative Research Visual Monitoring and Operational Protocols

The mitigation requirements described earlier are applicable to commercial fishing vessels engaged in NEFSC cooperative research using trawls, dredges, longline, hook and line, lobster pots/traps, and gillnet gears.

These commercial fishing vessels are significantly smaller than the NOAA vessels, and depending on their size and configuration, marine mammal sighting may be difficult to make during all aspects of fishing operations. Further, scientific personnel are normally restricted from the deck during gear setting and haul-back operations. For all vessel size classes, it is unlikely that the individual(s) searching for marine mammals will have unrestricted 360 degree visibility around the vessel. However, observations during approach to a fishing station and during gear setting and haul-back may be feasible and practicable from the wheelhouse.

These projects will also comply with the TRP mitigation measures and gear requirements specified for their respective fisheries and areas (*e.g.,* pingers, sinking groundlines, and weak links on gillnet gear).

The NEFSC will review all NEFSC-affiliated research instructions and protocols for avoiding adverse interactions with protected species. If those instructions/protocols are not fully consistent with NEFOP training materials and guidance on decision-making that arises from NEFSC protected species training, the NEFSC will incorporate specific language into its contracts and agreements with NEFSC-affiliated research partners requiring adherence to all required training requirements, operating procedures, and reporting requirements for protected species.

Operational procedures—For the Apex Predators Bottom Longline Coastal Shark and COASTSPAN longline and gillnet surveys, NEFSC partners would implement the Move-on-Rule. During the soak, the line is run and if any marine mammals are sighted the line is pulled immediately. On COASTSPAN gillnet surveys, gillnets are continuously monitored during the 3-hour soak time by under-running it, pulling it across the boat while leaving the net ends anchored. All animals, algae and other objects are removed with each pass as the net is reset into the water to minimize bycatch mortality.

Acoustic deterrent devices—NEFSC-affiliated cooperative research projects involving commercial vessels and gear, as well as the NEFOP Observer Training Gillnet Surveys currently deploy acoustic pingers on anchored sinking gillnets in areas where they are required by commercial fisheries to comply with requirements in the HPTRP (50 CFR 229.33). We considered the use of pingers in our notice of proposed rulemaking (80 FR 39558, July 9, 2015) and we do not discuss the potential taking of marine mammals resulting from NEFSC's use of pingers further in this document.

Pot/Trap Visual Monitoring and Operational Protocols

Several NEFSC and cooperative research surveys use fish or lobster pots to selectively capture species for research, tagging studies, and sample collection. Fish pots select for particular species by configuring the entrances, mesh, and escape tunnels (or "vents") to allow retention of the target species, while excluding larger animals, and allowing smaller animals to escape from the pot before retrieval.

Visual monitoring—The NEFSC and/or cooperating institutions shall initiate marine mammal watches (visual observation) no less than 30 minutes prior to both deployment and retrieval of the pot and trap gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

Operational Procedures—The NEFSC and/or cooperating institutions shall deploy pot gear as soon as is practicable upon arrival at the sampling station. The primary purpose of conducting a visual monitoring period is to implement the "move-on rule." The NEFSC and/or cooperating institutions shall implement the move-on rule. If marine mammals are sighted near the vessel before setting the gear, the NEFSC, as appropriate may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, the NEFSC may decide to move again or to skip the station. The NEFSC may use best professional judgment in making this decision but may not elect to conduct the pot and trap activity when animals remain near the vessel.

If marine mammals are sighted near the vessel during the soak and are determined to be at risk of interacting with the gear, then the NEFSC and/or cooperating institutions shall carefully retrieve the gear as quickly as possible. The NEFSC and/or cooperating institutions may use best professional judgment in making this decision.

The NEFSC and/or cooperating institutions shall ensure that surveys deploy gear fulfilling all pot/trap universal commercial gear configurations such as weak link requirements and marking requirements as specified by applicable take reduction plans as required for commercial pot/trap fisheries.

The NEFSC shall ensure that cooperating institutions conducting pot and trap surveys adhere to monitoring and mitigation requirements and shall include required protocols in all survey instructions, contracts, and agreements.

Acoustic Telemetry Gear Visual Monitoring and Operational Protocols

The NEFSC deploys passive acoustic telemetry receivers in many of Maine's rivers, estuaries, bays and into the Gulf of Maine. These receivers monitor tagged Atlantic salmon, as well as other tagged animals of collaborators along the east coast.

Visual monitoring—The receivers are set by small boat crews that visually survey the area for marine mammals prior to setting. Interactions with the gear or boats are not expected.

Operational Procedures—Receivers are anchored using a 24-pound mushroom anchor or a 79-pound cement mooring and attached to a surface float by an 11/16 inch sinking pot warp with a weight rating of 1,200 pounds. Units in the estuary and bay are equipped with whale-safe weak links with a weight rating of 600 pounds. Other receivers are deployed on coastal commercial lobstermen's fishing gears which comply with fishing regulations for nearshore operations. The receivers are recovered twice annually, but the traps are tended according to required fishing schedules of the fishery.

We have carefully evaluated the NEFSC's planned mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the NEFSC's planned measures, as well as other measures considered, NMFS has determined that these mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Description of Marine Mammals in the Area of the Specified Activity

NMFS previously reviewed the NEFSC species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of the NEFSC's application, as well as to NMFS' Stock Assessment Reports (SARs; *www.nmfs.noaa.gov/pr/sars/*). We also provided information related to all species with expected potential for occurrence in the specified geographical region where the NEFSC plans to conduct the specified activities, summarizing information related to the population or stock, including PBR. Please see Table 3 in the notice of proposed rulemaking (80 FR 39595, July 9, 2015) for that information. We do not repeat that information here.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

NMFS provided a summary and discussion of the ways that components of the specified activity (*e.g.*, gear deployment, use of active acoustic sources, and visual disturbance) may impact marine mammals and their habitat in the notice of proposed rulemaking (80 FR 39595, July 9, 2015). Specifically, we considered potential effects to marine mammals from ship strike, physical interaction with various gear types, use of active acoustic sources, and visual disturbance of pinnipeds, as well as effects to prey species and to acoustic habitat. We do not repeat that information here.

Estimated Take by Incidental Harassment, Serious Injury, or Mortality

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]." Serious injury means any injury that will likely result in mortality (50 CFR 216.3).

Take of marine mammals incidental to the NEFSC's research activities could occur as a result of: (1) Injury or mortality due to gear interaction; (2) behavioral disturbance resulting from the use of active acoustic sources (Level B harassment only); or (3) behavioral disturbance of pinnipeds hauled out on the shoreline resulting from close proximity of research vessels (Level B harassment only).

Estimated Take Due to Gear Interaction

Historical Interactions—In order to estimate the number of potential incidents of take that could occur by M/SI + Level A through gear interaction, we first considered the NEFSC's past record of such incidents, and then also considered other species that may have similar vulnerabilities to the NEFSC's trawl, gillnet, and fyke net gear for which we have historical interaction records. We describe historical interactions with NEFSC research gear in Tables 1, 2, and 3 in this rule. Available records are for the years 2004 through the present. Please see the NEFSC's Final PEA for specific locations of these incidents.

TABLE 1—HISTORICAL INTERACTIONS WITH TRAWL GEAR

Gear	Survey	Date	Species	Number killed	Number released alive	Total
Gourock high speed midwater rope trawl.	Atlantic Herring Survey	10/8/2004	Short-beaked common dolphin (Western NA stock).	2	0	2
Bottom trawl (4-seam, 3 bridle).	NEFSC Standard Bottom Trawl Survey.	11/11/2007	Short-beaked common dolphin (Western NA stock).	1	0	1
Gourock high speed midwater rope trawl.	Atlantic Herring Survey	10/11/2009	Minke whale	0	1[1]	1
Bottom trawl (4-seam, 3 bridle).	Spring Bottom Trawl Survey.	4/4/2015	Gray seal	1[2]	0	1
Total individuals captured (total number of interactions given in parentheses)			Short-beaked common dolphin (3).	3	0	3
			Minke whale (1)	0	1	1
			Gray seal (1)	1	0	1

[1] According to the incident report, "The net's cod end and whale were brought aboard just enough to undo the cod end and free the whale. It was on deck for about five minutes. While on deck, it was vocalizing and moving its tail up and down. The whale swam away upon release and appeared to be fine. Estimated length was 19 feet." The NEFSC later classified this incidental take as a serious injury using NMFS criteria for such determinations published in January 2012 (Cole and Henry, 2013).

[2] The NEFSC filed an incident report for this incidental take on April 4, 2015.

TABLE 2—HISTORICAL INTERACTIONS WITH GILLNET GEAR

Gear	Survey	Date	Species	Number killed	Number released alive	Total
Gillnet	COASTSPAN	11/29/2008	Common Bottlenose dolphin (Northern South Carolina Estuarine System stock)[1].	1	0	1
Gillnet	NEFOP Observer Gillnet Training Trips.	5/4/2009	Gray seal	1	0	1
Gillnet	NEFOP Observer Gillnet Training Trips.	5/4/2009	Harbor porpoise	1	0	1
Total individuals captured (total number of interactions given in parentheses)			Bottlenose dolphin (1)	1	0	1
			Gray seal (1)	1	0	1
			Harbor porpoise (1)	1	0	1

[1] In 2008, the COASTSPAN gillnet survey caught and killed one common bottlenose dolphin while a cooperating institution was conducting the survey in South Carolina. This was the only occurrence of incidental take in these surveys. Although no genetic information is available from this dolphin, based on the location of the event, NMFS retrospectively assigned this mortality to the Northern South Carolina Estuarine System stock in 2015 from the previous classification as the western North Atlantic stock (Waring *et al.*, 2014).

TABLE 3—HISTORICAL INTERACTIONS WITH FYKE NET GEAR

Gear	Survey	Date	Species	Number killed	Number released alive	Total
Fyke Net	Maine Estuaries Diadromous Survey.	10/25/2010	Harbor seal	1	0	1
Total		0		1	0	1

The NEFSC has no recorded interactions with any gear other than midwater and bottom trawl, gillnet, and fyke net gears. As noted in the notice of proposed rulemaking (80 FR 39595, July 9, 2015), we anticipate future interactions with the same gear types.

In order to use these historical interaction records in a precautionary manner as the basis for the take estimation process, and because we have no specific information to indicate whether any given future interaction might result in M/SI versus Level A harassment, we conservatively assume that all interactions equate to mortality.

During trawl surveys, the NEFSC has recorded interactions with short-beaked common dolphins (Western North Atlantic stock; two total interactions with three individual animals); minke whale (one total interaction with one animal); and gray seal (one total interaction with one animal). Common dolphins are the species most likely to interact with NEFSC trawl gear with an average of 1.5 dolphins captured per interaction.

During gillnet surveys, the NEFSC has recorded interactions with short-beaked common dolphins (Northern South Carolina Estuarine System stock; one total interaction with one animal); gray seal (one total interaction with one animal); and harbor porpoise (one total interaction with one animal).

During one fyke net survey in 2010, the NEFSC recorded one interaction with one harbor seal. Since this recorded interaction, the NEFSC now requires the use of marine mammal excluder devices as a mitigation measure for this gear type.

In order to produce the most precautionary take estimates possible, we use here the entirety of the data available to us (*i.e.*, 2004–15).

In order to estimate the potential number of incidents of M/SI + Level A that could occur incidental to the NEFSC's use of midwater and bottom trawl, gillnet, fyke net, and longline gear in the Atlantic coast region over the five-year period from 2015–20, we first look at the six species described that have been taken historically and then evaluate the potential vulnerability of additional species to these gears.

Table 4 in this document shows the 11-year annual average captures of these six species and the projected five-year totals for this final rule, for trawl, gillnet, and fyke net gear. In order to produce precautionary estimates, we calculate the annual average for the 11-year period (2004–2015) and round up the annual to the nearest whole number. Because the NEFSC requests take for a five-year period, we multiply the annual average by five and assume that this number may be taken within the effective five-year period of the proposed authorization.

To date, infrequent interactions of trawl nets, gillnets, and fyke net gears with marine mammals have occurred in the Atlantic coast region during NEFSC research activities. The NEFSC interaction rates have exhibited some inter-annual variation in numbers, possibly due to changing marine mammal densities and distributions and dynamic oceanographic conditions. This approach is precautionary. Estimating takes of species captured historically will produce an estimate higher than the historic average take for each species taken incidentally during past NEFSC research. We use this methodology to ensure accounting for the maximum amount of potential take in the future, as well as accounting for the fluctuations in inter-annual variability observed during the 11-year time period. Moreover, these estimates are based on the assumption that annual effort over the proposed five-year authorization period will not exceed the annual effort during the period 2004–2015.

TABLE 4—ANNUAL AVERAGE CAPTURES (2004–15) AND PROJECTED FIVE-YEAR TOTAL FOR HISTORICALLY-CAPTURED SPECIES

Gear	Species	2004	05	06	07	08	09	10	11	12	13	14	15	Avg. per year	Projected 5-year total[1]
Trawl	Short-beaked common dolphin	2	0	0	1	0	0	0	0	0	0	0	0	0.27	5
	Minke whale	0	0	0	0	0	1	0	0	0	0	0	0	0.09	5
	Gray seal	0	0	0	0	0	0	0	0	0	0	0	1	0.09	5
Gillnet	Common bottlenose dolphin	0	0	0	0	1	0	0	0	0	0	0	0	0.09	[2]5
	Harbor porpoise	0	0	0	0	0	1	0	0	0	0	0	0	0.09	5
	Gray seal	0	0	0	0	0	1	0	0	0	0	0	0	0.09	5
Fyke net	Harbor seal	0	0	0	0	0	0	1	0	0	0	0	0	0.09	5

[1] The estimated total is the product of the 2004–2015 annual average rounded up to the nearest whole number and multiplied by the five-year timespan of the proposed rule.

[2] The projected 5-year total includes an estimate of 5 each for the Western North Atlantic offshore, the Western North Atlantic Northern Migratory Coastal, and the Western North Atlantic Southern Migratory Coastal stocks of common bottlenose dolphins. The NEFSC is not requesting take for the estuarine stocks of bottlenose dolphins for the COASTPAN surveys.

As background to the process of determining which species not historically taken may have sufficient vulnerability to capture in NEFSC gear to justify inclusion in the take authorization request, we note that the NEFSC is NMFS' research arm in the Greater Atlantic region which we consider as a leading source of expert knowledge regarding marine mammals (*e.g.*, behavior, abundance, density) in the areas where the NEFSC operates. The NEFSC formulated the take requests for species selected by NEFSC subject matter experts who based their selections on the best available information. We have concurred with these decisions.

In order to evaluate the potential vulnerability of additional species to trawl gears, gillnets, and fyke nets, we first consulted NMFS' List of Fisheries (LOF), which classifies U.S. commercial fisheries into one of three categories according to the level of incidental marine mammal M/SI that is known to occur on an annual basis over the most recent five-year period (generally) for which data has been analyzed. Despite no historical records of take in the

NEFSC's pelagic and bottom longline surveys, there is a substantial record of marine mammal take in commercial fisheries using similar gears. Therefore, we consider potential takes through use of longline gear through analogy to commercial fisheries. NMFS provided this information, as presented in the 2015 LOF (79 FR 77919; January 28, 2015), in Tables 8, 9, and 10 in the notice of proposed rulemaking (80 FR 39595, July 9, 2015) and do not reproduce it here.

Information related to incidental M/SI in relevant commercial fisheries is not, however, the sole determinant of whether it may be appropriate to authorize M/SI + Level A incidental to NEFSC survey operations. A number of factors (*e.g.,* species-specific knowledge regarding animal behavior, overall abundance in the geographic region, density relative to NEFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) were taken into account by the NEFSC to determine whether a species may have a similar vulnerability to certain types of gear as historically taken species. In some cases, we have determined that species without documented M/SI may nevertheless be vulnerable to capture in NEFSC research gear. We have also determined that some species groups with documented M/SI are not likely to be vulnerable to capture in NEFSC gear. In these instances, we provide further explanation later in this document. Those species with no records of historical interaction with NEFSC research gear and no documented M/SI in relevant commercial fisheries, and for which the NEFSC has not requested the authorization of incidental take, are not considered further in this section. The NEFSC believes generally that any sex or age class of those species for which take authorization is requested could be captured.

Non-historical interactions—In addition to those species the NEFSC has directly interacted with research fishing gear over the 11-year period (2004–2015), the NEFSC believes it is appropriate to include estimates for future incidental takes of a number of species that have not been taken historically but inhabit the same areas and show similar types of behaviors and vulnerabilities to such gear as the "reference" species taken in the past. The NEFSC believes the potential for take of these other "analogous" species would be low and would occur rarely, if at all, based on lack of takes over the past 11 years.

We note that prior takes in the cooperative research fishery are assigned to the respective fishery; therefore the NEFSC did not consider those types of take in formulating the requested authorization. The NEFSC only estimated takes for NEFSC gear that: (1) Had a prior take in the historical record or (2) had analogous takes with commercial fishing gear.

Vulnerability of analogous species to different gear types is informed by the record of interactions by the analogous and reference species with commercial fisheries using gear types similar to those used in research. Furthermore, when determining the amount of take requested, we make a distinction between analogous species thought to have the same vulnerability for incidental take as the reference species and those analogous species that may have a similar vulnerability. In those cases thought to have the same vulnerability, the request is for the same number per year as the reference species. In those cases thought to have similar vulnerability, the request is less than the reference species. For example, the NEFSC believes the vulnerability of harbor seals to be taken in trawl gear and gillnets is the same as for gray seals (one per year) and thus requests one harbor seal per year (total of five over the authorization period) for trawl gear and gillnets.

Alternatively, the potential for take of Atlantic white-sided dolphins in gillnets is expected to be similar but less than that associated with harbor porpoises (one per year) and the reduced request relative to this reference species is one Atlantic white sided dolphin over the entire five-year authorization period.

The approach outlined here reflects: (1) Concern that some species with which we have not had historical interactions may interact with these gears, (2) acknowledgment of variation between sets, and (3) understanding that many marine mammals are not solitary so if a set results in take, the take could be greater than one animal. In these particular instances, the NEFSC estimates the take of these species to be equal to the maximum interactions per any given set of a reference species historically taken during 2004–2015.

Trawls—To estimate the requested taking of analogous species, the NEFSC identified several species in the western North Atlantic Ocean which may have similar vulnerability to research-based trawls as the short-beaked common dolphin. The maximum take of short-beaked common dolphin was two individuals in one trawl set in 2004. Therefore, on the basis of similar vulnerability, the NEFSC estimates two potential takes over the five year authorization period for each of the following species in trawls: Risso's dolphin; common bottlenose dolphin (offshore and both northern and southern coastal migratory stocks); Atlantic-white-sided dolphin; white-beaked dolphin; Atlantic spotted dolphin; and harbor porpoise. For these species, we propose to authorize a total taking by M/SI + Level A of two individuals over the five-year timespan (see Table 5).

Other dolphin species may have similar vulnerabilities as those listed above but because of the timing and location of NEFSC research activities, the NEFSC concluded that the likelihood for take of these species was low (see Tables 8, 9, and 10 in the notice of proposed rulemaking [80 FR 39595, July 9, 2015]). Those species include: Pantropical spotted dolphin; striped dolphin; Fraser's dolphin; rough-toothed dolphin; Clymene dolphin; and spinner dolphin.

Two pinniped species may be taken in commercial fisheries analogous to NEFSC research trawl activities. Therefore, NEFSC requests one potential take each of gray and harbor seals annually in trawls over the LOA authorization period. For these pinniped species, we propose to authorize a total taking by M/SI + Level A of five individuals over the five-year timespan (see Table 5).

Gillnets—To estimate the requested take of analogous species for gillnets, the NEFSC identified several species in the western North Atlantic Ocean which may have similar vulnerability to research-based gillnet surveys as the bottlenose dolphin due to similar behaviors and distributions in the survey areas.

Gillnet surveys typically occur nearshore in bays and estuaries. The NEFSC caught one gray seal and one harbor porpoise during Northeast Fisheries Observer Program training gillnet surveys. The NEFSC believes that harbor seals have the same vulnerability to be taken in gillnets as gray seals and therefore estimates five takes of harbor seals in gillnets over the five-year authorization period. For this species, we propose to authorize a total taking by M/SI + Level A of five individuals over the five-year timespan (see Table 5).

Likewise, the NEFSC believes that Atlantic white-sided dolphins and short-beaked common dolphins have a similar vulnerability to be taken in gillnets as harbor porpoise and bottlenose dolphins and estimates one take each of Atlantic white-sided dolphin and short-beaked common dolphin in gillnet gear over the five-year authorization period. For this species, we propose to authorize a total taking by M/SI + Level A of one individual over the five-year timespan (see Table 5).

In 2008, the COASTSPAN gillnet survey caught and killed one common bottlenose dolphin while a cooperating institution was conducting the survey in South Carolina. This was the only occurrence of incidental take in these surveys. The NEFSC is not requesting any bottlenose dolphin takes from the Northern South Carolina Estuarine System stock, because of limited survey effort in estuarine waters. The NEFSC considers there to be a remote chance of incidentally taking a bottlenose dolphin from the estuarine stocks. Thus, the NEFSC is not requesting take for the estuarine stocks of bottlenose dolphins for the COASTPAN longline and gillnet surveys. However, in the future, if there is a bottlenose dolphin take from the estuarine stocks as confirmed by genetic sampling, the NEFSC will reconsider its take request in consultation and coordination with the NMFS Office of Protected Resources and the Atlantic Bottlenose Dolphin Take Reduction Team.

Fyke nets—For fyke nets, the NEFSC believes that gray seals have a similar vulnerability for incidental take as harbor seals which interacted once in a single fyke net set during the past 11 years. For the period of this authorization, the NEFSC estimates one take annually by fyke net for gray and harbor seals over the five-year authorization period. Thus, for gray and harbor seals, we propose to authorize a total taking by M/SI + Level A of five individuals of harbor and gray seals over the five-year timespan (see Table 5).

Longlines—While the NEFSC has not historically interacted with large whales or other cetaceans in its longline gear, it is well documented that some of these species are taken in commercial longline fisheries. The 2015 LOF classifies commercial fisheries based on prior interactions with marine mammals. Although the NEFSC used this information to help make an informed decision on the probability of specific cetacean and large whale interactions with longline gear, many other factors were also taken into account (*e.g.,* relative survey effort, survey location, similarity in gear type, animal behavior, prior history of NEFSC interactions with longline gear, *etc.*). Therefore, there are several species that have been shown to interact with commercial longline fisheries but for which the NEFSC is not requesting take. For example, the NEFSC is not requesting take of large whales, long-finned pilot whales, and short-finned pilot whales in longline gear. Although these species could become entangled in longline gear, the probability of interaction with NEFSC longline gear is extremely low considering a low level of survey effort relative to that of commercial fisheries, the short length of the mainline, and low numbers of hooks used. Based on the amount of fish caught by commercial fisheries versus NEFSC fisheries research, the "footprint" of research effort compared to commercial fisheries is very small. The NEFSC considered previously caught species (as outlined in the 2015 List of Fisheries, see Tables 8, 9, and 10 in the notice of proposed rulemaking (80 FR 39595, July 9, 2015) in analogous commercial fisheries to have a higher probability of take; however, all were not included for potential take by the NEFSC. Historically, marine mammals have never been caught or entangled in NEFSC longline gear. However, such gear could be considered analogous to potential commercial longline surveys that may be conducted elsewhere (*e.g.,* Garrison, 2007; Roche *et al.,* 2007; Straley *et al.,* 2014). Given the potential for interactions, NEFSC estimates one take over the five-year authorization period of the following cetaceans in longline gear: Risso's dolphin; common bottlenose dolphin (offshore and both northern and southern coastal migratory stocks); and short-beaked common dolphins. For these species, we propose to authorize a total taking by M/SI + Level A of one individual over the five-year timespan (see Table 5).

It is also possible that researchers may not be able to identify a captured animal to the species level with certainty. Certain pinnipeds and small cetaceans are difficult to differentiate at sea, especially in low-light situations or when a quick release is necessary. For example, a captured delphinid that is struggling in the net may escape or be freed before positive identification is made. Therefore, the NEFSC has requested the authorization of incidental M/SI + Level A for an unidentified delphinid by trawl (1 individual), gillnet (1 individual), and longline (1 individual) gears over the course of the five-year period of the proposed authorization. Similarly, the NEFSC has requested the authorization of incidental M/SI + Level A for an unidentified pinniped by trawl (1 individual), fyke net (1 individual), gillnet (1 individual), and longline (1 individual) gears.

Table 5 summarizes total estimated take due to gear interactions in the Atlantic coast region; these estimates reflects revisions from those provided in the notice of proposed rulemaking (80 FR 39595, July 9, 2015) and the correction to the proposed rulemaking in the **Federal Register** on August 6, 2015 (80 FR 46939).

TABLE 5—TOTAL ESTIMATED M/SI + LEVEL A DUE TO GEAR INTERACTION IN THE ATLANTIC COAST REGION, 2015–2020

Species	Est. 5-year total, trawl [1]	Est. 5-year total, gillnet [1]	Est. 5-year total, longline [1]	Est. 5-year total, fyke net [1]	Total, all gears
Minke whale	5	0	0	0	5
Risso's dolphin	2	0	1	0	3
Atlantic white-sided dolphin	2	1	0	0	3
White-beaked dolphin	2	0	0	0	2
Short-beaked common dolphin	5	1	1	0	7
Atlantic spotted dolphin	2	0	0	0	2
Common bottlenose dolphin (WNA offshore stock) [2]	2	5	1	0	8
Common bottlenose dolphin (WNA N. Migratory stock) [2]	2	5	1	0	8
Common bottlenose dolphin (WNA S. Migratory stock) [2]	2	5	1	0	8
Harbor porpoise	2	5	0	0	7
Unidentified delphinid	1	1	1	0	3
Harbor seal	5	5	0	5	15
Gray seal	5	5	0	5	15

TABLE 5—TOTAL ESTIMATED M/SI + LEVEL A DUE TO GEAR INTERACTION IN THE ATLANTIC COAST REGION, 2015–2020—Continued

Species	Est. 5-year total, trawl [1]	Est. 5-year total, gillnet [1]	Est. 5-year total, longline [1]	Est. 5-year total, fyke net [1]	Total, all gears
Unidentified pinniped	1	1	1	1	4

[1] Please see preceding text for derivation of take estimates.
[2] The NEFSC is not requesting takes for the estuarine stocks of bottlenose dolphins for the COASTPAN surveys.

Estimated Take Due to Acoustic Harassment

As described in the notice of proposed rulemaking (80 FR 39595, July 9, 2015), we believe that NEFSC's use of active acoustic sources has, at most, the potential to cause Level B harassment of marine mammals. In order to attempt to quantify the potential for Level B harassment to occur, NMFS (including the NEFSC and acoustics experts from other parts of NMFS) developed an analytical framework considering characteristics of the active acoustic systems described in the notice of proposed rulemaking (80 FR 39595, July 9, 2015) under *Description of Active Acoustic Sound Sources,* their expected patterns of use in the Atlantic coast region, and characteristics of the marine mammal species that may interact with them. We believe that this quantitative assessment benefits from its simplicity and consistency with current NMFS acoustic guidance regarding Level B harassment but caution that, based on a number of deliberately precautionary assumptions, the resulting take estimates should be seen as a likely overestimate of the potential for behavioral harassment to occur as a result of the operation of these systems.

The assessment paradigm for active acoustic sources used in NEFSC fisheries research is relatively straightforward and has a number of key simplifying assumptions. NMFS' current acoustic guidance requires in most cases that we assume Level B harassment occurs when a marine mammal receives an acoustic signal at or above a simple step-function threshold. For use of these active acoustic systems, the current threshold is 160 dB re 1 μPa (rms) for Level B harassment. Estimating the number of exposures at the 160–dB received level requires several determinations, each of which is described sequentially here:

(1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;

(2) The operational areas exposed to levels at or above those associated with Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or "swath width") of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of individuals for which sound levels exceed the relevant threshold for each area. The number of potential incidents of Level B harassment is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the upper 200 m of the water column versus those that regularly dive deeper during foraging and transit. We described the approach used (including methods for estimating each of the calculations described above) and the assumptions made that result in conservative estimates in significant detail in our notice of proposed rulemaking (80 FR 39595, July 9, 2015), and do not repeat the discussion here.

As a result of discussion with NMFS subject matter experts in drafting the final rule, we have determined it appropriate to account for marine mammal functional hearing, although our consideration of functional hearing is fairly simplistic. We now consider functional hearing cut-offs (*i.e.,* ranges of the functional hearing groups described in the notice of proposed rulemaking [80 FR 39595, July 9, 2015] and in Southall *et al.* [2007]) in a straightforward manner in these calculations (*i.e.,* sources are considered unlikely to lead to any Level B harassment if they are above or below functional hearing cut-offs). The result of this consideration is recognition that mysticetes are unlikely to perceive these signals; therefore, receipt of the signal would be highly unlikely to result in any reaction considered to be harassment.

However, the known differences in hearing sensitivities between different marine mammal species, and within a functional hearing range (*e.g.,* as reflected in auditory weighting functions), are not considered in estimates of Level B harassment by acoustic sources. All species are assumed to be equally sensitive to acoustic systems operating within their functional hearing range; therefore, the quantitative results presented here remain conservative with respect to functional hearing. We provide a summary of the results in Table 6.

TABLE 6—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE ATLANTIC COAST REGION AND ADJACENT OFFSHORE WATERS

Species	Volumetric density (#/km^3)	Estimated Level B harassment (#s of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum	Total
		EK60	ME70	DSM300	EK60	
Atlantic Coast Region Cetaceans						
North Atlantic right whale	n/a	0	0	0	NA	[1] 0

TABLE 6—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE ATLANTIC COAST REGION AND ADJACENT OFFSHORE WATERS—Continued

Species	Volumetric density (#/km^3)	Estimated Level B harassment (#s of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum	Total
		EK60	ME70	DSM300	EK60	
Humpback whale	n/a	0	0	0	NA	[1]0
Fin whale	n/a	0	0	0	NA	[1]0
Sei whale	n/a	0	0	0	NA	[1]0
Minke whale	n/a	0	0	0	NA	[1]0
Blue whale	n/a	0	0	0	NA	[1]0
Sperm whale	0.00005	0	0	0	NA	[2]0
Dwarf sperm whale	0.0001	0	0	0	NA	[2]0
Pygmy sperm whale	0.0001	0	0	0	NA	[2]0
Killer Whale	0.00	0	0	0	NA	[2]0
Pygmy killer whale	0.00	0	0	0	NA	[2]0
Northern bottlenose whale	0.00	0	0	0	NA	[2]0
Cuvier's beaked whale	0.0105	3	8	2	NA	13
Mesoplodon beaked whales	0.0105	3	8	2	NA	13
Melon-headed whale	0.00	0	0	0	NA	[2]0
Risso's dolphin	0.011	3	8	2	NA	13
Long-finned pilot whale	0.1725	41	127	35	NA	203
Short-finned pilot whale	0.1725	41	127	35	NA	203
Atlantic white-sided dolphin	0.122	29	90	25	NA	144
White-beaked dolphin	0.0405	10	30	8	NA	48
Short-beaked common dolphin	1.0575	254	780	213	NA	1,247
Atlantic spotted dolphin	0.00	0	0	0	NA	[2]0
Pantropical spotted dolphin	0.00	0	0	0	NA	[2]0
Striped dolphin	0.00	0	0	0	NA	[2]0
Fraser's dolphin	0.00	0	0	0	NA	[2]0
Rough toothed dolphin	0.00	0	0	0	NA	[2]0
Clymene dolphin	0.00	0	0	0	NA	[2]0
Spinner dolphin	0.00	0	0	0	NA	[2]0
Common bottlenose dolphin (offshore)	0.0300	7	22	6	NA	35
Common bottlenose dolphin (coastal)	0.5165	124	381	104	NA	609
Harbor Porpoise	0.0965	23	71	19	NA	113
Atlantic Coast Region Pinnipeds						
Harbor Seal	1.422	342	1,049	287	NA	1,678
Gray Seal	0.00	0	0	0	NA	[2]0
Harp Seal	0.00	0	0	0	NA	[2]0
Hooded Seal	0.00	0	0	0	NA	[2]0
Offshore Area Cetaceans						
North Atlantic right whale	n/a	0	0	0	0	[2]0
Humpback whale	n/a	0	0	0	0	[2]0
Fin whale	n/a	0	0	0	0	[2]0
Sei whale	n/a	0	0	0	0	[2]0
Minke whale	n/a	0	0	0	0	[2]0
Blue whale	n/a	1	1	0	0	[1]0
Sperm whale	0.0304	12	3	0	15	15
Dwarf sperm whale	0.004	0	0	0	2	2
Pygmy sperm whale	0.004	0	0	0	2	2
Killer Whale	0.00	0	0	0	0	[2]0
Pygmy killer whale	0.00	0	0	0	0	[2]0
Northern bottlenose whale	0.0034	0	0	0	2	2
Cuvier's beaked whale	0.0312	2	3	....	15	20
Mesoplodon beaked whales	0.0312	2	3	0	15	20
Melon-headed whale	0.00	0	0	0	0	[2]0
Risso's dolphin	0.422	22	44	0	0	66
Long-finned pilot whale	0.0512	3	5	0	24	32
Short-finned pilot whale	0.0512	3	5	0	24	32
Atlantic white-sided dolphin	0.00	0	0	0	0	[2]0
White-beaked dolphin	0.00	0	0	0	0	[2]0
Short-beaked common dolphin	0.9375	49	97	0	0	146
Atlantic spotted dolphin	0.104	5	11	0	0	16
Pantropical spotted dolphin	0.00	0	0	0	0	[2]0
Striped dolphin	1.514	79	157	0	0	236
Fraser's dolphin	0.00	0	0	0	0	[2]0
Rough toothed dolphin	0.008	0	1	0	0	1

TABLE 6—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE ATLANTIC COAST REGION AND ADJACENT OFFSHORE WATERS—Continued

Species	Volumetric density (#/km^3)	Estimated Level B harassment (#s of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum	Total
		EK60	ME70	DSM300	EK60	
Clymene dolphin	0.00	0	0	0	0	[2]0
Spinner dolphin	0.00	0	0	0	0	[2]0
Common bottlenose dolphin (offshore)	0.2630	14	27	0	0	41

n/a: not applicable

[1] For mysticetes unlikely to be impacted by the predominant active acoustic sources used by the NEFSC, NMFS adjusted the take estimates from ten to zero based on functional hearing group sensitivity for mysticetes.

[2] For species with unknown or very low volumetric densities, NMFS adjusted the take estimates from ten to zero because of the low probability of sighting or interaction with these species during most research cruises with the active acoustic instruments used in NEFSC research.

Estimated Take Due to Physical Disturbance

Estimated take due to physical disturbance could potentially occur in the Penobscot River Estuary as a result of the unintentional approach of NEFSC vessels to pinnipeds hauled out on ledges.

The NEFSC uses four gear types (fyke nets, beach seine, rotary screw traps, and Mamou shrimp trawl) to monitor fish communities in the Penobscot River Estuary. The NEFSC conducts the annual surveys over specific sampling periods which could use any gear type: Mamou trawling is conducted year-round; fyke net and beach seine surveys are conducted April-November; and rotary screw trap surveys from April-June.

We anticipate that trawl, fyke net, and beach seine surveys may disturb harbor seals and gray seals hauled out on tidal ledges through physical presence of researchers. The NEFSC conducts these surveys in upper Penobscot Bay above Fort Point Ledge where there is only one minor seal ledge (Odum Ledge) used by approximately 50 harbor seals (*i.e.,* based on a June 2001 survey). Although one cannot assume that the number of seals using this region is stable over the April-November survey period; it is likely lower in spring and autumn.

There were no observations of gray seals in the 2001 survey, but recent anecdotal information suggests that a few gray seals may share the haulout site. These fisheries research activities do not entail intentional approaches to seals on ledges (*i.e.,* boats avoid close approach to tidal ledges and no gear is deployed near the tidal ledges); only behavioral disturbance incidental to small boat activities is anticipated. It is likely that some pinnipeds on the ledges would move or flush from the haul-out into the water in response to the presence or sound of NEFSC survey vessels. Behavioral responses may be considered according to the scale shown in Table 7. We consider responses corresponding to Levels 2–3 to constitute Level B harassment.

TABLE 7—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flush	All retreats (flushes) to the water.

The NEFSC estimated potential incidents of Level B harassment due to physical disturbance (Table 8) using the following assumptions: (1) All hauled out seals may be disturbed by passing research skiffs, although researchers have estimated that only about 10 percent (5 animals in a group of 50) have been visibly disturbed in the past; and (2) approximately 50 harbor seals and 20 gray seals may be disturbed by the passage of researchers for each survey effort (100 fyke net sets, 100 beach seine sets, and 200 Mamou shrimp trawls per year).

The estimated total number of instances of harassment is approximately 20,000 for harbor seals and 8,000 for gray seals annually.

TABLE 8—ESTIMATED ANNUAL LEVEL B HARASSMENT TAKE OF PINNIPEDS ASSOCIATED WITH SURVEYS IN THE LOWER ESTUARY OF THE PENOBSCOT RIVER

Species	Estimated seals on ledge haulout	Survey gear	Number of sets	Survey season	Estimated instances of harassment
Harbor seal	50	Fyke net	100	April-November	5,000
Gray seal	20				2,000

TABLE 8—ESTIMATED ANNUAL LEVEL B HARASSMENT TAKE OF PINNIPEDS ASSOCIATED WITH SURVEYS IN THE LOWER ESTUARY OF THE PENOBSCOT RIVER—Continued

Species	Estimated seals on ledge haulout	Survey gear	Number of sets	Survey season	Estimated instances of harassment
Harbor seal	50	Beach seine	100	April-November	5,000
Gray seal	20				2,000
Harbor seal	50	Mamou shrimp trawl	200	Year-round	10,000
Gray seal	20				4,000

Summary of Estimated Incidental Take

Here we provide summary tables detailing the total proposed incidental take authorization on an annual basis for the NEFSC in the Atlantic coast region, as well as other information relevant to the negligible impact analyses.

TABLE 9—SUMMARY INFORMATION RELATED TO PROPOSED ANNUAL TAKE AUTHORIZATION IN THE ATLANTIC COAST REGION, 2016–2021

Species [1]	Proposed total annual Level B harassment authorization	Percent of estimated population	Proposed total M/SI + Level A authorization, 2015–2020	Estimated maximum annual M/SI + Level A [2]	PBR [3]	% PBR [4]	Stock trend [5]
North Atlantic Right whale.	0	0	0	0	n/a		↑
Humpback whale	0	0	0	0	n/a		↑
Minke whale	0	0	5	1	162	0.62	?
Sei whale	0	0	0	0	n/a		?
Fin whale	0	0	0	0	n/a		?
Blue whale	0	0	0	0	n/a		?
Sperm whale	15	0.65	0	0	n/a		?
Kogia spp.	4	0.10	0	0	n/a		?
Cuvier's beaked whale.	33	0.51	0	0	n/a		?
Northern bottlenose whale.	2	undet	0	0	n/a		?
Mesoplodont beaked whales.	33	0.47	0	0	n/a		
Bottlenose dolphin (WNA Offshore) [6].	76	0.10	[6]11	2.2	561	0.39	?
Bottlenose dolphin (WNA, Northern Migratory Coastal) [6].	609	5.27	[6]11	2.2	86	2.56	?
Bottlenose dolphin (WNA, Southern Migratory Coastal) [6].	609	6.64	[6]11	2.2	63	3.49	?
Pantropical spotted dolphin.	0	0	0	0	n/a		?
Atlantic spotted dolphin.	16	0.06	3	0.6	316	0.19	?
Spinner dolphin	0	undet.	0	0	n/a		?
Striped dolphin	236	0.45	0	0	n/a		?
Short-beaked common dolphin.	1,393	0.80	10	2	1,152	1.18	?
White-beaked dolphin.	48	2.90	3	0.6	10	6.00	?
Atlantic white-sided-dolphin.	144	0.32	5	1	304	0.33	?
Risso's dolphin	79	0.43	5	1	126	0.79	?
Fraser's dolphin	0	undet	0	0	n/a		?
Rough-toothed dolphin.	1	0.37	0	0	n/a		?
Clymene dolphin	0	0	0	0	n/a		?
Melon-headed whale.	0	undet	0	0	n/a		?
Pygmy killer whale	0	undet	0	0	n/a		?
Northern bottlenose whale.	12	undet	0	0	n/a		?

TABLE 9—SUMMARY INFORMATION RELATED TO PROPOSED ANNUAL TAKE AUTHORIZATION IN THE ATLANTIC COAST REGION, 2016–2021—Continued

Species [1]	Proposed total annual Level B harassment authorization	Percent of estimated population	Proposed total M/SI + Level A authorization, 2015–2020	Estimated maximum annual M/SI + Level A [2]	PBR [3]	% PBR [4]	Stock trend [5]
Long-finned pilot whale.	235	0.89	0	0	n/a		?
Short-finned pilot whale.	235	1.09	0	0	n/a		?
Harbor porpoise	113	0.14	7	1.4	706	0.20	?
Gray seal	[7] 0; 8,000	2.42	15	3.6	1,469	0.25	↑
Harp seal	0	0	0	0	n/a		→↑
Harbor seal	[7] 1,678; 20,000	2.48	15	3.6	1,662	0.22	?
Unidentified delphinid.				n/a	n/a		n/a
Unidentified pinniped.				n/a	n/a		n/a

Please see preceding text for details.

[1] For species with multiple stocks in the Atlantic coast regions or for species groups (*Kogia spp.* and Mesoplodont beaked whales), indicated level of take could occur to individuals from any stock or species (not including coastal and estuarine stocks of bottlenose dolphins).

[2] This column represents the total number of incidents of M/SI + Level A that could potentially accrue to the specified species or stock and is the number carried forward for evaluation in the negligible impact analysis (later in this document). To reach this total, we add one to the total for each pinniped or delphinid that may be captured in longline or gillnet gear, one to the total for each delphinid that may be captured in trawl gear, and one pinniped that may be captured in fyke net gear. This represents the potential that the take of an unidentified pinniped or delphinid could accrue to any given stock captured in that gear. The proposed take authorization is formulated as a five-year total; the annual average is used only for purposes of negligible impact analysis. We recognize that portions of an animal may not be taken in a given year.

[3] See Table 3 in the proposed notice of rulemaking and following discussion for more detail regarding PBR.

[4] Estimated maximum annual M/SI + Level A expressed as a percentage of PBR.

[5] See relevant SARs for more information regarding stock status and trends. Interannual increases may not be interpreted as evidence of a trend.

[6] For these stocks of bottlenose dolphins, the estimated annual maximum numbers of M/SI + Level A reflect the stock-specific trawl estimate (2), plus five for gillnet take, plus one for longline take, plus three for the potential take of one unidentified delphinid by trawl, gillnet, and longline.

[7] The first number represents estimated annual Level B take by acoustic sources. The second number represents estimated annual Level B take by the physical disturbance during surveys in Penobscot Bay.

Analyses and Determinations

Here we provide negligible impact analyses and small numbers analyses for the Atlantic coast region. Unless otherwise specified, the discussion below is intended to apply to all of the species for which take is authorized, *i.e.*, those discussed previously and indicated in Table 9 given that the anticipated effects of these activities are expected to be similar in nature, and there is no information about the size, status, or structure of any species or stock that would lead to a different analysis. In some cases we add species-specific factors.

Negligible Impact Analyses

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.*, intensity, duration), the context of any such responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat. We also evaluate the number, intensity, and context of estimated takes by evaluating this information relative to population status. The impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.*, as reflected in the density/distribution and status of the species, population size and growth rate).

In 1988, Congress amended the MMPA, with provisions for the incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to set allowable take levels incidental to commercial fishing operations led NMFS to suggest a new and simpler conceptual means for assuring that incidental take does not cause any marine mammal species or stock to be reduced or to be maintained below the lower limit of its Optimum Sustainable Population (OSP) level. That concept (PBR) was incorporated in the 1994 amendments to the MMPA, wherein Congress enacted MMPA sections 117 and 118, establishing a new regime governing the incidental taking of marine mammals in commercial fishing operations and stock assessments.

PBR, which is defined by the MMPA (16 U.S.C. 1362(20)) as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population," is one tool that can be used to help evaluate the effects of M/SI on a marine mammal stock. OSP is defined by the MMPA (16 U.S.C. 1362(9)) as "the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." A primary goal of the MMPA is to ensure that each stock of marine mammal either does not have a level of human-caused M/SI that is likely to cause the stock to be reduced below its OSP level or, if the stock is depleted (*i.e.*, below its OSP level), does not have a level of human-caused mortality and serious injury that is likely to delay restoration of the stock to OSP level by more than ten percent in comparison with recovery time in the absence of human-caused M/SI.

PBR appears within the MMPA only in section 117 (relating to periodic stock assessments) and in portions of section 118 describing requirements for take reduction plans for reducing marine mammal bycatch in commercial fisheries. PBR was not designed as an absolute threshold limiting human activities, but as a means to evaluate the relative impacts of those activities on marine mammal stocks. Specifically, assessing M/SI relative to a stock's PBR may signal to NMFS the need to establish take reduction teams in commercial fisheries and may assist NMFS and existing take reduction teams in the identification of measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below a stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather may prioritize working with a take reduction team to further mitigate the effects of fishery activities via additional bycatch reduction measures.

Since the introduction of PBR, NMFS has used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA, including those within section 101(a)(5)(E) related to the taking of ESA-listed marine mammals incidental to commercial fisheries (64 FR 28800; May 27, 1999). The MMPA requires that PBR be estimated in stock assessment reports and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.*, the take reduction planning process described in section 118 of the MMPA. Although NMFS has not historically applied PBR outside the context of sections 117 and 118, NMFS recognizes that as a quantitative tool, PBR may be useful in certain instances for evaluating the impacts of other human-caused activities on marine mammal stocks. In this analysis, we consider incidental M/SI relative to PBR for each affected stock, in addition to considering the interaction of those removals with incidental taking of that stock by harassment, within our evaluation of the likely impacts of the proposed activities on marine mammal stocks and in determining whether those impacts are likely to be negligible. Our use of PBR in this case does not make up the entirety of our impact assessment, but rather is utilized as a known, quantitative metric for evaluating whether the proposed activities are likely to have a population-level effect on the affected marine mammal stocks. For the purposes of analyzing this specified activity, NMFS acknowledges that some of the fisheries research activities use similar gear and may have similar effects, but on a smaller scale, as marine mammal take by commercial fisheries.

Species/Group Specific Analysis—To avoid repetition, the majority of our determinations apply to all the species listed in Table 9, given that the anticipated effects of the NEFSC research activities are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, we describe them within the section or within a separate sub-section. See the *Brief Background on Sound* section earlier in the notice of proposed rulemaking (80 FR 39542, July 9, 2015) for a description of marine mammal functional hearing groups as originally designated by Southall *et al.* (2007).

Acoustic Effects—Please refer to Table 9 for information relating to this analysis. As described in greater depth previously (see *Acoustic Effects*, in the notice of proposed rulemaking (80 FR 39542, July 9, 2015)), we do not believe that the NEFSC's use of active acoustic sources has the likely potential to cause any effect exceeding Level B harassment of marine mammals. In addition, for the majority of species, the proposed annual take by Level B harassment is very low in relation to the population abundance estimate (less than 7.5 percent) for each stock.

We have produced what we believe to be conservative estimates of potential incidents of Level B harassment. The procedure for producing these estimates, described in detail in the notice of proposed rulemaking (80 FR 39542, July 9, 2015) and summarized earlier in the *Estimated Take Due to Acoustic Harassment* section, represents NMFS' best effort towards balancing the need to quantify the potential for occurrence of Level B harassment due to production of underwater sound with a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment and to a meaningful understanding of marine mammal perception of these signals and occurrence in the areas where the NEFSC operates. The sources considered here have moderate to high output frequencies (10 to 200 kHz), generally short ping durations, and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (*e.g.*, energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impacts on marine mammals in comparison with the quantitative estimates that guide our take authorization.

In particular, low-frequency hearing specialists (*i.e.*, mysticetes) are less likely to perceive or, given perception, to react to these signals. These groups have reduced functional hearing at the higher frequencies produced by active acoustic sources considered here (*e.g.*, primary operating frequencies of 38–200 kHz) and, based purely on their auditory capabilities, the potential impacts are likely much less (or non-existent). However, for purposes of this analysis, we assume that the take levels proposed for authorization would not occur for mysticetes. As described previously, there is some minimal potential for temporary effects to hearing for certain marine mammals (*i.e.*, odontocete cetaceans), but most effects would likely be limited to temporary behavioral disturbance. Effects on individuals that are taken by Level B harassment will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity (*e.g.*, Southall *et al.*, 2007). There is the potential for behavioral reactions of greater severity, including displacement, but because of the directional nature of the sources considered here and because the source is itself moving, these outcomes are unlikely and would be of short duration if they did occur. Although there is no information on which to base any distinction between incidents of harassment and individuals harassed, the same factors, in conjunction with the fact that NEFSC survey effort is widely dispersed in space and time, indicate that repeated exposures of the same individuals would be very unlikely.

Take by M/SI + Level A—We now consider the level of taking by M/SI + Level A proposed for authorization. First, it is likely that required injury determinations will show some undetermined number of gear interactions to result in Level A harassment rather than serious injury; therefore, our authorized take numbers are overestimates with regard solely to M/SI. In addition, we note that these take levels are likely precautionary overall when considering that: (1) Estimates for historically taken species were developed assuming that the annual average number of takes from 2004–2015, would occur in each year from 2015–20; and that (2) the majority of species for which take authorization is proposed have never been taken in NEFSC surveys.

However, assuming that all of the takes proposed for authorization actually occur, we assess these quantitatively by comparing to the calculated PBR for each stock. Estimated M/SI + Level A for all stocks is significantly less than PBR (less than six percent for each stock).

Large whales (North Atlantic right, blue, fin, sei, humpback, and sperm whales)—Due to their very low numbers within the NEFSC research area and a tendency to occur primarily in waters outside of the NEFSC research area, blue, sperm, and sei whales rarely coincide with NEFSC fisheries research vessels. Thus, we anticipate that any potential gear interactions are unlikely. There have been no entanglements or takes of blue, sperm, or sei whales or any ESA-listed marine mammals in NEFSC fisheries research. Thus, there are no requested take by M/SI + Level A of these species during the next five years. Given the mitigation measures in place and the lack of historical takes, the NEFSC does not expect to have any adverse gear interactions with ESA-listed cetaceans in research surveys.

Long- and short-finned pilot whales—Due to the low levels of survey effort in hotspot areas for pilot whales, adherence to gear requirements for longline surveys, low numbers of hooks and sets used in longline surveys, and short soak times with continuous monitoring during gillnet surveys, we anticipate that any potential gear interactions are unlikely. There have been no entanglements or takes of long- or short-finned pilot whales in NEFSC fisheries research. Thus, there are no requested take by M/SI + Level A of these species during the next five years.

Take by Physical Disturbance—We note that the NEFSC conducts one set of research activities where the physical presence of researchers may result in Level B incidental harassment of pinnipeds on haulouts. This level of periodic incidental harassment would have temporary effects and would not be expected to alter the continued use of the tidal ledges by seals. Anecdotal reports from previous monitoring show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after the NEFSC conducted their research activities. Based on the following factors, the NEFSC's research activities are not likely to cause permanent abandonment of the haulout areas, injury, serious injury, or mortality because: (1) The effects of the research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities; (2) minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering; and (3) the availability of alternate areas for pinnipeds to avoid the resultant visual disturbances from the research operations.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned mitigation measures, we find that the total marine mammal take from NEFSC fisheries research activities will have a negligible impact on the affected marine mammal species or stocks in the Atlantic coast region. In summary, this finding of negligible impact is founded on the following factors: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices consist of, at worst, temporary and relatively minor modifications in behavior; (3) the predicted number of incidents of combined Level A harassment, serious injury, and mortality are at insignificant levels relative to all affected stocks; and (4) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact. In addition, no M/SI is proposed for authorization for any species or stock that is listed under the ESA. In combination, we believe that these factors demonstrate that the specified activity will have only short-term effects on individuals (resulting from Level B harassment) and that the total level of taking will not impact rates of recruitment or survival sufficiently to result in population-level impacts.

Small Numbers Analyses

Please see Table 9 for information relating to this small numbers analysis. The total amount of taking proposed for authorization is less than 6.0 percent for all stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks in the Atlantic coast region.

Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving, or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of an individual; or (2) population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The NEFSC plans to make more systematic its training, operations, data collection, animal handling and sampling protocols, etc. in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. It is in this spirit that NMFS and the NEFSC crafted the monitoring requirements described here.

Visual Monitoring

Marine mammal watches are a standard part of conducting fisheries research activities, and are implemented as described previously in *Mitigation.* Marine mammal watches and monitoring occur prior to deployment of gear, and they continue until gear is brought back on board. Office of Marine Aviation and Operations personnel operating NOAA vessels are required to monitor interactions with protected species (and report interactions to the NEFSC Director). Similarly, there is a condition of grant and contract awards for monitoring of protected species takes.

In the Penobscot Bay only, the NEFSC will monitor any potential disturbance of pinnipeds on ledges, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance will be recorded according to the three-point scale, representing increasing seal response to disturbance, shown in Table 7.

Training

The NEFSC anticipates that additional information on practices to avoid marine mammal interactions can be gleaned from training sessions and more systematic data collection standards. The NEFSC will conduct annual trainings for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations (relevant to Penobscot Bay surveys), completion of datasheets, and use of equipment. Some of these topics may be familiar to NEFSC staff, who may be professional biologists; the NEFSC shall determine the agenda for these trainings and ensure that all relevant staff have necessary familiarity with these topics.

The NEFSC will also dedicate a portion of training to discussion of best professional judgment (which is recognized as an integral component of mitigation implementation; see "Mitigation"), including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful. We recognize that many factors come into play regarding decision-making at sea and that it is not practicable to simplify what are inherently variable and complex situational decisions into rules that may be defined on paper. However, it is our intent that use of best professional judgment be an iterative process from year to year, in which any at-sea decision-maker (*i.e.,* responsible for decisions regarding the avoidance of marine mammal interactions with survey gear through the application of best professional judgment) learns from the prior experience of all relevant NEFSC personnel (rather than from solely their own experience). The outcome should be increased transparency in decision-making processes where best professional judgment is appropriate and, to the extent possible, some degree of standardization across common situations, with an ultimate goal of reducing marine mammal interactions. It is the responsibility of the NEFSC to facilitate such exchange.

Handling Procedures and Data Collection

Improved standardization of handling procedures were discussed previously in *Mitigation.* In addition to the benefits implementing these protocols are believed to have on the animals through increased post-release survival, NEFSC believes adopting these protocols for data collection will also increase the information on which "serious injury" determinations (NMFS, 2012a, b) are based and improve scientific knowledge about marine mammals that interact with fisheries research gears and the factors that contribute to these interactions. NEFSC personnel will be provided standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water and log activities pertaining to the interaction.

NEFSC will record interaction information on either existing data forms created by other NMFS programs or will develop their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines (NMFS, 2012a, b), researchers will also answer a series of supplemental questions on the details of marine mammal interactions.

Reporting

As is normally the case, NEFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. The NEFSC will follow a phased approach with regard to the cessation of its activities and/or reporting of such events, as described in the proposed regulatory texts following this preamble. In addition, Chief Scientists (or cruise leader, CS) will provide reports to NEFSC leadership and to the Office of Protected Resources (OPR) by event, survey leg, and cruise. As a result, when marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling the NEFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The NEFSC will submit annual summary reports to OPR including: (1) Annual line-kilometers surveyed during which the EK60, ME70, DSM900 (or equivalent sources) were predominant; (2) summary information regarding use of all NEFSC-specific gears, including: longline (including bottom and vertical lines), gillnet, fyke net, and trawl (including bottom trawl) gear, including number of sets, hook hours, tows, etc., specific to each gear; (3) accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why; (4) summary information related to any disturbance of pinnipeds during the Penobscot Bay surveys, including event-specific total counts of animals present, counts of reactions according to the three-point scale shown in Table 7, and distance of closest approach; and (5) a written evaluation of the effectiveness of NEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any. The period of reporting will be a one year period beginning at the date of issuance of the LOA. The NEFSC must submit the report not less than ninety days following the end of the reporting period. Submission of this information is in service of an adaptive management framework allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the five-year period of validity for these regulations.

NMFS has established a formal incidental take reporting system, the Protected Species Incidental Take (PSIT) database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been entered into the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc.

The NEFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for marine mammals that are released alive. NEFSC will require that the CS complete data forms (already developed and used by commercial fisheries observer programs) and address supplemental questions, both of which have been developed to aid in SI determinations. NEFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the NEFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

Adaptive Management

The final regulation governing the take of marine mammals incidental to NEFSC fisheries research survey operations in the specified geographical region contains an adaptive management component. The inclusion of an adaptive management component is both valuable and necessary within the context of five-year regulation for activities that have been associated with marine mammal mortality.

The reporting requirements associated with this final rule are designed to provide OPR with monitoring data from the previous year to allow consideration of whether any changes are appropriate. NMFS OPR and the NEFSC will meet annually to discuss the monitoring reports and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows NMFS OPR to consider new information from different sources to determine (with input from the NEFSC regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by this regulation or subsequent LOA.

Changes to the Proposed Regulations

As a result of clarifying discussions with NEFSC, we made certain changes to the proposed regulations as described here. These changes are considered minor and do not affect any of our preliminary determinations.

Mitigation Measures for Pot/Trap Gear

As described in the notice of proposed rulemaking (80 FR 39546–39560; July 9, 2015), NEFSC engages in cooperative research activities and observer training that may use different gear types and vary from year to year, while remaining within the overall scope of activity described and analyzed for NEFSC. Within the scope of the proposed rule, NEFSC plans to conduct or fund observer training using pot/trap gear within the period of validity for these regulations; therefore, it is appropriate to specify mitigation measures specific to this gear type. Inclusion of mitigation measures specific to pot/trap gear does not affect any of our determinations, and does not reflect an increase in the total amount or type of activity anticipated or change in the extent or type of taking anticipated.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by these actions, in the specified geographical region for which we are issuing this regulation. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

There are multiple marine mammal species listed under the ESA with confirmed or possible occurrence in the specified geographical region. In the Northeast Region, research surveys occur in two areas that have been designated as critical habitat for the North Atlantic right whale (NOAA, 1994). These are the Cape Cod Bay (CCB) Critical Habitat Area and the Great South Channel (GSC) Critical Habitat Area. NMFS OPR initiated consultation with NMFS' Greater Atlantic Regional Office (GARFO) under section 7 of the ESA on the promulgation of a five-year regulation and the subsequent issuance of an LOA to the NEFSC under section 7 of the ESA. In June 2016, the GARFO issued a biological opinion to OPR and the NEFSC (concerning conduct of the specified activities) which concluded that the issuance of the authorization is not likely to jeopardize the continued existence of any listed marine mammal species is not likely to adversely affect any listed marine mammal species. The opinion also concluded that the issuance of the authorization would not affect any designated critical habitat.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the CEQ (40 CFR parts 1500–1508), the NEFSC prepared a PEA to consider the direct, indirect and cumulative effects to the human environment resulting from the described research activities. OPR made NEFSC's draft PEA available to the public for review and comment, in relation to its suitability for adoption by OPR in order to assess the impacts to the human environment of issuance of a regulation and subsequent Letter of Authorization to the NEFSC. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, OPR has reviewed NEFSC's PEA, determined it to be sufficient, and adopted that PEA and signed a Finding of No Significant Impact (FONSI) on August 2, 2016. The NEFSC's EA and OPR's FONSI for this action may be found on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

Classification

Per the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

This rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a federal agency. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 219

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: August 2, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, the NMFS amends 50 CFR part 219 as follows:

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart D to part 219 to read as follows:

Subpart D—Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research in the Atlantic Coast Region

Sec.

219.31 Specified activity and specified geographical region.
219.32 Effective dates.
219.33 Permissible methods of taking.
219.34 Prohibitions.
219.35 Mitigation requirements.
219.36 Requirements for monitoring and reporting.
219.37 Letters of Authorization.
219.38 Renewals and modifications of Letters of Authorization.
219.39—219.40 [Reserved]

Authority: 16 U.S.C. 1361 *et seq.*

Subpart D—Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research in the Atlantic Coast Region

§ 219.31 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Northeast Fisheries Science Center (NEFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by NEFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the Atlantic coast region.

§ 219.32 Effective dates.

Regulations in this subpart are effective September 12, 2016 through September 9, 2021.

§ 219.33 Permissible methods of taking.

(a) Under LOAs issued pursuant to § 216.106 of this chapter and § 219.7, the Holder of the LOA (hereinafter "NEFSC") may incidentally, but not intentionally, take marine mammals within the area described in § 219.31(b) by Level B harassment associated with use of active acoustic systems and physical or visual disturbance of hauled-out pinnipeds and by Level A harassment, serious injury, or mortality associated with use of trawl, dredge, bottom and pelagic longline, gillnet, pot and trap, fyke net, beach seine, and rotary screw trap gears, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 219.34 Prohibitions.

Notwithstanding takings contemplated in § 219.31 and authorized by a LOA issued under § 216.106 of this chapter and § 219.7, no person may, in connection with the activities described in § 219.31:

(a) Take any marine mammal not specified in § 219.33(b);

(b) Take any marine mammal specified in § 219.33(b) in any manner other than as specified;

(c) Take a marine mammal specified in § 219.33(b) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Take a marine mammal specified in § 219.33(b) if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 219.37.

§ 219.35 Mitigation requirements.

When conducting the activities identified in § 219.31(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 219.37 must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) NEFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon.

(2) NEFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between the ship's crew (Commanding Officer/master or designee(s), contracted vessel owners, as appropriate) and scientific party or in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) NEFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, NEFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(5) All vessels must comply with applicable and relevant take reduction

plans, including any required use of acoustic deterrent devices.

(6) All vessels must comply with applicable speed restrictions.

(7) NEFSC shall implement handling and/or disentanglement protocols as specified in the guidance provided to NEFSC survey personnel.

(b) Trawl survey protocols:

(1) NEFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall initiate marine mammal watches (visual observation) prior to sampling. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) NEFSC shall implement the "move-on rule." If a marine mammal is sighted around the vessel before setting the gear, NEFSC may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision.

(4) NEFSC shall maintain visual monitoring effort during the entire period of time that trawl gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, NEFSC shall take the most appropriate action to avoid marine mammal interaction. NEFSC may use best professional judgment in making this decision.

(5) If trawling operations have been suspended because of the presence of marine mammals, NEFSC may resume trawl operations when practicable only when the animals are believed to have departed the area. NEFSC may use best professional judgment in making this determination.

(6) NEFSC shall implement standard survey protocols to minimize potential for marine mammal interaction, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval. Trawl nets must be cleaned prior to deployment.

(c) Dredge survey protocols:

(1) NEFSC shall deploy dredge gear as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall initiate marine mammal watches (visual observation) prior to sampling. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) NEFSC shall implement the "move-on rule." If marine mammals are sighted around the vessel before setting the gear, the NEFSC may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision but may not elect to conduct dredge survey activity when animals remain near the vessel.

(4) NEFSC shall maintain visual monitoring effort during the entire period of time that dredge gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, NEFSC shall take the most appropriate action to avoid marine mammal interaction. NEFSC may use best professional judgment in making this decision.

(5) If dredging operations have been suspended because of the presence of marine mammals, NEFSC may resume operations when practicable only when the animals are believed to have departed the area. NEFSC may use best professional judgment in making this determination.

(6) NEFSC shall carefully empty the dredge gear as quickly as possible upon retrieval to determine if marine mammals are present in the gear.

(d) Bottom and pelagic longline survey protocols:

(1) NEFSC shall deploy longline gear as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall initiate marine mammal watches (visual observation) no less than thirty minutes prior to both deployment and retrieval of the longline gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) NEFSC shall implement the "move-on rule." If marine mammals are sighted near the vessel 30 minutes before setting the gear, the NEFSC may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision but may not elect to conduct longline survey activity when animals remain near the vessel.

(4) For the Apex Predators Bottom Longline Coastal Shark Survey, if one or more marine mammals are observed within 1 nautical mile (nmi) of the planned location in the 30 minutes before gear deployment, NEFSC shall transit to a different section of the sampling area to maintain a minimum set distance of 1 nmi from the observed marine mammals. If, after moving on, marine mammals remain within 1 nmi, NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision but may not elect to conduct pelagic longline survey activity when animals remain within the 1-nmi zone.

(5) NEFSC shall maintain visual monitoring effort during the entire period of gear deployment or retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, NEFSC shall take the most appropriate action to avoid marine mammal interaction. NEFSC may use best professional judgment in making this decision.

(6) If deployment or retrieval operations have been suspended because of the presence of marine mammals, NEFSC may resume such operations after there are no sightings of marine mammals for at least 15 minutes within the area or within the 1-nmi area for the Apex Predators Bottom Longline Coastal Shark Survey. NEFSC may use best professional judgment in making this decision.

(7) NEFSC shall implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

(e) Gillnet survey protocols:

(1) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall deploy gillnet gear as soon as is practicable upon arrival at the sampling station.

(2) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall initiate marine mammal watches (visual observation) prior to both deployment and retrieval of the gillnet gear. When the vessel is on station during the soak, marine mammal watches shall be

conducted during the soak by scanning the surrounding waters with the naked eye and binoculars (or monocular).

(3) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall implement the "move-on rule." If marine mammals are sighted near the vessel before setting the gear, the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains, may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains may decide to move again or to skip the station. The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains may use best professional judgment in making this decision but may not elect to conduct the gillnet survey activity when animals remain near the vessel.

(4) If marine mammals are sighted near the vessel during the soak and are determined to be at risk of interacting with the gear, then the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall carefully retrieve the gear as quickly as possible. The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains may use best professional judgment in making this decision.

(5) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall implement standard survey protocols, including continuously monitoring the gillnet gear during soak time and removing debris with each pass as the net is reset into the water to minimize bycatch.

(6) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall ensure that surveys deploy acoustic pingers on gillnets in areas where required for commercial fisheries. NEFSC must ensure that the devices are operating properly before deploying the net.

(7) NEFSC shall ensure that cooperating institutions, contracted vessels, or commercially-hired captains conducting gillnet surveys adhere to monitoring and mitigation requirements and shall include required protocols in all survey instructions, contracts, and agreements.

(8) For the COASTSPAN gillnet surveys, the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains will actively monitor for potential bottlenose dolphin entanglements by hand-checking the gillnet every 20 minutes. In the unexpected case of a bottlenose dolphin entanglement, the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall request and arrange for expedited genetic sampling for stock determination. The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall also photograph the dorsal fin and submit the image to the NMFS Southeast Stranding Coordinator for identification/matching to bottlenose dolphins in the Mid-Atlantic Bottlenose Dolphin Photo-identification Catalog.

(f) Pot and trap survey protocols:

(1) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall deploy pot gear as soon as is practicable upon arrival at the sampling station.

(2) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall initiate marine mammal watches (visual observation) no less than 30 minutes prior to both deployment and retrieval of the pot and trap gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall implement the move-on rule. If marine mammals are sighted near the vessel before setting the gear, the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains, as appropriate, may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, the NEFSC, and/or its cooperating institutions, contracted vessels, or commercially-hired captains may decide to move again or to skip the station. The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains may use best professional judgment in making this decision but may not elect to conduct the pot and trap activity when animals remain near the vessel.

(4) If marine mammals are sighted near the vessel during the soak and are determined to be at risk of interacting with the gear, then the NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall carefully retrieve the gear as quickly as possible. The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains may use best professional judgment in making this decision.

(5) The NEFSC and/or its cooperating institutions, contracted vessels, or commercially-hired captains shall ensure that surveys deploy gear fulfilling all Pot/Trap universal commercial gear configurations such as weak link requirements and marking requirements as specified by applicable take reduction plans as required for commercial pot/trap fisheries.

(6) The NEFSC shall ensure that its cooperating institutions, contracted vessels, or commercially-hired captains conducting pot and trap surveys adhere to monitoring and mitigation requirements and shall include required protocols in all survey instructions, contracts, and agreements.

(g) Fyke net gear protocols:

(1) NEFSC shall conduct fyke net gear deployment as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall visually survey the area prior to both deployment and retrieval of the fyke net gear. NEFSC shall conduct monitoring and retrieval of the gear every 12- to 24-hour soak period.

(3) If marine mammals are in close proximity (approximately 328 feet [100 meters]) of the setting location, NEFSC shall determine if the set location should be moved. NEFSC may use best professional judgment in making this decision.

(4) If marine mammals are observed to interact with the gear during the setting, NEFSC shall lift and remove the gear from the water.

(5) NEFSC must install and use a marine mammal excluder device at all times when the 2-meter fyke net is used.

(h) Beach seine gear protocols:

(1) NEFSC shall conduct beach seine deployment as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall visually survey the area prior to both deployment and retrieval of the seine net gear.

(3) If marine mammals are in close proximity of the seining location, NEFSC shall lift the net and remove it from the water. NEFSC may use best professional judgment in making this decision.

(i) Rotary screw trap gear protocols:

(1) NEFSC shall conduct rotary screw trap deployment as soon as is

practicable upon arrival at the sampling station.

(2) NEFSC shall visually survey the area prior to both setting and retrieval of the rotary screw trap gear. If marine mammals are observed in the sampling area, NEFSC shall suspend or delay the sampling. NEFSC may use best professional judgment in making this decision.

(3) NEFSC shall tend to the trap on a daily basis to monitor for marine mammal interactions with the gear.

(4) If the rotary screw trap captures a marine mammal, NEFSC shall carefully release the animal as soon as possible.

§ 219.36 Requirements for monitoring and reporting.

(a) Visual monitoring program:

(1) Marine mammal visual monitoring shall occur: prior to deployment of beam, mid-water, and bottom trawl, bottom and pelagic longline, gillnet, fyke net, beach seine, pot, trap, and rotary screw trap gear; throughout deployment of gear and active fishing of all research gears; and throughout retrieval of all research gear.

(2) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated.

(3) NEFSC shall monitor any potential disturbance of pinnipeds on ledges, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance shall be recorded according to a three-point scale of response (*i.e.,* 1 = alert; 2 = movement; 3 = flight) to disturbance.

(b) The NEFSC shall continue to conduct a local census of pinniped haulout areas prior to conducting any fisheries research in the Penobscot River estuary to better understand the local abundance of animals. The NEFSC's census reports will now include an accounting of disturbance based on the three-point scale of response severity metrics.

(c) Training:

(1) NEFSC must conduct annual training for all chief scientists and other personnel (including its cooperating institutions, contracted vessels, or commercially-hired captains) who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. NEFSC may determine the agenda for these trainings.

(2) NEFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) NEFSC shall coordinate with NMFS' Southeast Fisheries Science Center (SEFSC) regarding surveys conducted in the southern portion of the Atlantic coast region, such that training and guidance related to handling procedures and data collection is consistent.

(d) Handling procedures and data collection:

(1) NEFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS Office of Protected Resources (OPR).

(2) When practicable, for any marine mammal interaction involving the release of a live animal, NEFSC shall collect necessary data to facilitate a serious injury determination.

(3) NEFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring/or not bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) NEFSC shall record such data on standardized forms, which will be subject to approval by OPR. The data shall be collected at a sufficient level of detail (*e.g.,* circumstances leading to the interaction, extent of injury, condition upon release) to facilitate serious injury determinations under the MMPA.

(e) Reporting:

(1) NEFSC shall report all incidents of marine mammal interaction to NMFS' Protected Species Incidental Take database within 48 hours of occurrence.

(2) NEFSC shall provide written reports to OPR upon request following any marine mammal interaction (animal captured or entangled in research gear). In the event of a marine mammal interaction, these reports shall include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling.

(3) Annual reporting:

(i) The period of reporting will be one year beginning at the date of issuance of the LOA. NEFSC shall submit an annual summary report to OPR not later than ninety days following the end of the reporting period.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, ME70, DSM300 (or equivalent sources) were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of the following: All trawl gear, all longline gear, all gillnet gear, all dredge gear, fyke net gear, beach seine net gear, and rotary screw trap gear (including number of sets, hook hours, tows, and tending frequency specific to each gear type);

(C) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(D) Summary information from the pinniped haulout censuses in the and summary information related to any disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to a three-point scale of response severity (1 = alert; 2 = movement; 3 = flight), and distance of closest approach;

(E) A written evaluation of the effectiveness of NEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(F) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(G) A summary of all relevant training provided by the NEFSC and any coordination with the Southeast Fishery Science Center, the Greater Atlantic Regional Office, and the Southeast Regional Office, NMFS.

(f) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the specified activity clearly causes the take of a large whale (*i.e.,* entanglement or ship strike) or if the NEFSC and/or its cooperating institutions observe a carcass entangled in gear or struck by any vessel, the NEFSC and/or its cooperating institutions must immediately report the incident to 866–755–6622 in the Northeast region (VA–ME) and 877–WHALE–HELP in the Southeast region (FL–NC). If personnel are unable to call these numbers, personnel must contact the United States Coast Guard (USCG). For active entanglements, NEFSC personnel and/or its cooperating institutions are not allowed to remove any gear until they

receive a temporary authorization from NMFS.

(2) In the unanticipated event that the activity defined in § 219.31(a) clearly causes the take of a marine mammal in a prohibited manner, NEFSC and/or its cooperating institution personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the NEFSC Director (or designee). For large whales, the NEFSC and/or its cooperating institutions must first contact the hotline numbers or the USCG as outlined in paragraph (f)(1) of this section. The NEFSC must also report the incident immediately to OPR, the Greater Atlantic Regional Stranding Coordinator, and the Southeast Regional Stranding Coordinator, NMFS. OPR will review the circumstances of the prohibited take and work with NEFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (including wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s).

(3) In the event that NEFSC and/or its cooperating institutions discover an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), NEFSC shall immediately report the incident to OPR, the Greater Atlantic Regional Stranding Coordinator, and the Southeast Regional Stranding Coordinator, NMFS. For large whales, the NEFSC and/or its cooperating institutions must first contact the hotline numbers or the USCG as outlined in paragraph (f)(1) of this section. The report must include the same information identified in paragraph (f)(2) of this section. Activities may continue while OPR reviews the circumstances of the incident. OPR will work with NEFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(4) In the event that NEFSC and/or its cooperating institutions discover an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 219.31(a) (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), NEFSC shall report the incident to OPR, the Greater Atlantic Regional Stranding Coordinator, and the Southeast Regional Stranding Coordinator, NMFS within 24 hours of the discovery. For large whales, the NEFSC and/or its cooperating institutions must first contact the hotline numbers or the USCG as outlined in paragraph (f)(1) of this section. NEFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR, the Greater Atlantic Regional Stranding Coordinator, and the Southeast Regional Stranding Coordinator, NMFS.

§ 219.37 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, NEFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, NEFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, NEFSC must apply for and obtain a modification of the LOA as described in § 219.38.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 219.38 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 219.37 for the activity identified in § 219.31(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 219.37 for the activity identified in § 219.31(a) may be modified by OPR under the following circumstances:

(1) Adaptive Management—OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with NEFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from NEFSC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 219.32(b), an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 219.39—219.40 [Reserved]

[FR Doc. 2016–18739 Filed 8–10–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 81, No. 155

Thursday, August 11, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8503; Airspace Docket No. 16–ASW–11]

Proposed Amendment of Class D and E Airspace for the Following Texas Towns; Houston Sugar Land, TX; Alice, TX; Bay City, TX; Brenham, TX; Burnet, TX; Falfurrias, TX; Graford, TX; and Hamilton, TX, and Proposed Revocation of Class E Airspace; Austin Horseshoe Bay Resort Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D and Class E surface area airspace at Sugar Land Regional Airport, Houston Sugar Land, TX. The FAA also proposes to modify Class E airspace extending upward from 700 feet above the surface at Kingsville Kleberg County Airport, Alice, TX; Bay City Municipal Airport, Bay City, TX; Brenham Municipal Airport, Brenham, TX; Burnet Municipal Airport-Kate Craddock Field, Burnet, TX; Brooks County Airport, Falfurrias, TX; Possum Kingdom Airport, Graford, TX; and Hamilton Municipal Airport, Hamilton, TX. Decommissioning of non-directional radio beacons (NDBs), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at these airports. This action also proposes to remove Class E airspace at Horseshoe Bay Resort Airport, Austin, TX, as controlled airspace is no longer needed. Additionally, the geographic coordinates at Bay City Municipal Airport, Brenham Municipal Airport, and Brooks County Airport, as well as the name of Sugar Land Regional Airport (formerly Sugar Land Municipal/Hull Field) would be adjusted to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before September 26, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2016–8503; Airspace Docket No. 16–ASW–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D airspace and Class E surface area airspace at Sugar Land Regional Airport, Houston Sugar Land, TX; amend Class E airspace extending upward from 700 feet above the surface at Kingsville Kleberg County Airport, Alice, TX; Bay City Municipal Airport, Bay City, TX; Brenham Municipal Airport, Brenham, TX; Burnet Municipal Airport-Kate Craddock Field, Burnet, TX; Brooks County Airport, Falfurrias, TX; Possum Kingdom Airport, Graford, TX; and Hamilton Municipal Airport, Hamilton, TX; and remove Class E at Horseshoe Bay Resort Airport, Austin, TX.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–8503/Airspace Docket No. 16–ASW–11." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying:

Class D airspace and Class E surface area airspace within a 5.8-mile radius of Sugar Land Regional Airport, Houston Sugar Land, TX, and updating the name of airport to coincide with the FAA's aeronautical database;

Class E airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Kingsville, Kleberg County Airport, Alice, TX, with an extension northwest of the airport from the 6.6-mile radius to 10.3 miles;

Within a 6.5-mile radius of Bay City Municipal Airport, Bay City, TX, and updating the geographic coordinates of the airport to coincide with the FAAs aeronautical database;

Within a 6.5-mile radius of Brenham Municipal Airport, Brenham TX, and updating the geographic coordinates of the airport to coincide with the FAAs aeronautical database;

Within a 6.6-mile radius of the Burnet Municipal Airport-Kate Craddock Field, Burnet, TX;

Within a 6.6-mile radius of Brooks County Airport, Falfurrias, TX, and updating the geographic coordinates of the airport to coincide with the FAAs aeronautical databases;

Within a 7.0-mile radius of Possum Kingdom Airport, Graford, TX, with extensions to the northeast of the airport from the 7.0-mile radius to 10.9 miles, and to the southwest of the airport from the 7.0-mile radius to 10.9 miles;

And within a 6.5-mile radius of Hamilton Municipal Airport, Hamilton, TX, with extensions to the north of the airport from the 6.5-mile radius to 9.4 miles, and to the south of the airport from the 6.5-mile radius to 10.3 miles;

The Class E airspace area extending upward from 700 feet above the surface within a 6.5-mile radius of Horseshoe Bay Resort Airport, Austin Horseshoe Bay Resort Airport, TX, would be removed as the SIAPs have been cancelled and controlled airspace is no longer needed.

Airspace reconfiguration is necessary due to the decommissioning of NDBs, cancellation of NDB approaches, and implementation of RNAV procedures at the above airports. Controlled airspace is necessary for the safety and management of the standard instrument approach procedures for IFR operations at the airports.

Class D and E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Houston Sugar Land, TX [Amended]

Sugar Land, Sugar Land Regional Airport, TX
(Lat. 29°37′20″ N., long. 95°39′24″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.8-mile radius of Sugar Land Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASW TX E2 Houston Sugar Land, TX [Amended]

Sugar Land, Sugar Land Regional Airport, TX
(Lat. 29°37′20″ N., long. 95°39′24″ W.)

Within a 5.8-mile radius of Sugar Land Regional Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Alice, TX [Amended]

Alice International Airport, TX
(Lat. 27°44′27″ N., long. 98°01′37″ W.)
Orange Grove NALF, TX

(Lat. 27°53′49″ N., long. 98°02′37″ W.)
Navy Orange Grove TACAN
(Lat. 27°53′43″ N., long. 98°02′33″ W.)
Kingsville, Kleberg County Airport, TX
(Lat. 27°33′03″ N., long. 98°01′51″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Alice International Airport, and within 2 miles each side of the 135° bearing from Alice International Airport extending from the 7.5-mile radius to 9.8 miles southeast of the airport, and within a 7.2-mile radius of the Orange Grove NALF, and within 1.6 miles each side of the 129° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius of the Orange Grove NALF to 11 miles southeast of the Orange Grove NALF, and within 1.5 miles each side of the 320° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius of the Orange Grove NALF to 9.7 miles northwest of the Orange Grove NALF, and within a 6.6-mile radius of Kleberg County Airport, and within 4.0 miles each side of the 320° bearing from the Kleberg County Airport from the 6.6-mile radius to 10.3 miles northwest of the airport, excluding that airspace within the Corpus Christi, TX, Class E airspace area.

* * * * *

ASW TX E5 Austin, Horseshoe Bay Resort Airport, TX [Removed]

* * * * *

ASW TX E5 Bay City, TX [Amended]

Bay City Municipal Airport, TX
(Lat. 28°58′24″ N., long. 95°51′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Bay City Municipal Airport.

* * * * *

ASW TX E5 Brenham, TX [Amended]

Brenham Municipal Airport, TX
(Lat. 30°13′11″ N., long. 96°22′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Brenham Municipal Airport.

* * * * *

ASW TX E5 Burnet, TX [Amended]

Burnet Municipal Airport-Kate Craddock Field, TX
(Lat. 30°44′20″ N., long. 98°14′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Burnet Municipal Airport-Kate Craddock Field.

* * * * *

ASW TX E5 Falfurrias, TX [Amended]

Brooks County Airport, TX
(Lat. 27°12′22″ N., long. 98°07′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Brooks County Airport.

* * * * *

ASW TX E5 Graford, TX [Amended]

Possum Kingdom Airport, TX
(Lat. 32°55′24″ N., long. 98°26′13″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Possum Kingdom Airport and within 4 miles each side of the 031° bearing from the airport extending from the 7.0-mile radius to 10.9 miles northeast of the airport, and within 4 miles each side of the 210° bearing from the airport extending from the 7.0-mile radius to 10.9 miles southwest of the airport.

* * * * *

ASW TX E5 Hamilton, TX [Amended]

Hamilton Municipal Airport, TX
(Lat. 31°39′57″ N., long. 98°08′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hamilton Municipal Airport, and within 2 miles each side of the 009° bearing from the airport extending from the 6.5-mile radius to 9.4 miles north of the airport, and within 2 miles each side of the 189° bearing from the airport extending from the 6.5-mile radius to 10.3 miles south of the airport.

Issued in Fort Worth, Texas, on August 1, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–18769 Filed 8–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8557; Airspace Docket No. 16–AGL–17]

Proposed Amendment of Class E Airspace for the Following Wisconsin Towns; Antigo, WI; Ashland, WI; Black River Falls, WI; Cable Union, WI; Cumberland, WI; Eagle River, WI; Hayward, WI; and Wausau, WI, and Proposed Revocation of Class E Airspace; Wausau, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Langlade County Airport, Antigo, WI; John F. Kennedy Memorial Airport, Ashland, WI; Black River Falls Area Airport, Black River Falls, WI; Cable Union Airport, Cable Union, WI; Cumberland Municipal Airport, Cumberland, WI; Eagle River Union Airport, Eagle River, WI; Sawyer County Airport, Hayward, WI; and Wausau Downtown Airport, Wausau, WI. Decommissioning of non-directional radio beacon (NDB), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. This action also proposes to remove Class E surface area airspace at Wausau Municipal Airport (Wausau Downtown Airport), Wausau, WI, as a review has determined that the airport no longer meets the requirements for this airspace. Additionally, the geographic coordinates at Langlade County Airport, John F. Kennedy Memorial Airport, Cumberland Municipal Airport, Eagle River Union Airport, and Wausau Downtown Airport (formerly Wausau Municipal Airport) would be adjusted to coincide with the FAAs aeronautical database.

DATES: Comments must be received on or before September 26, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2016–8557; Airspace Docket No. 16–AGL–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface at Langlade County Airport, Antigo, WI; John F. Kennedy Memorial Airport, Ashland, WI; Black River Falls Area Airport, Black River Falls, WI; Cable Union Airport, Cable Union, WI; Cumberland Municipal Airport, Cumberland, WI; Eagle River Union Airport, Eagle River, WI; Sawyer County Airport, Hayward, WI; and Wausau Downtown Airport, Wausau, WI; and remove Class E surface area airspace at Wausau Downtown Airport (formerly Wausau Municipal Airport), Wausau, WI.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–8557/Airspace Docket No. 16–AGL–17." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface:

Within a 6.5-mile radius of Langlade County Airport, Antigo, WI, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 7.0-mile radius of John F. Kennedy Memorial Airport, Ashland, WI, with an extension southwest of the airport from the 7.0-mile radius to 8.2 miles, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 7.1-mile radius of Black River Falls Area Airport, Black River Falls, WI, with an extension southwest of the airport from the 7.1-mile radius to 11.7 miles, with an extension northeast of the airport from the 7.1-mile radius to 11.4 miles;

Within a 6.9-mile radius of Cable Union Airport, Cable Union, WI;

Within a 6.4-mile radius of Cumberland Municipal Airport, Cumberland, WI, with extensions from the 6.4-mile radius to 10.2 miles west and east; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 6.5-mile radius of Eagle River Union Airport, Eagle River, WI, with an extension southwest of the airport from the 6.5-mile radius to 9.2 miles, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 6.6-mile radius of Sawyer County Airport, Hayward, WI, with an extension northeast of the airport from the 6.6-mile radius to 8.5 miles;

And within a 6.8-mile radius of Wausau Downtown Airport, Wausau, WI, and updating the name and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

The Class E airspace designated as a surface area at Wausau Municipal Airport, Wausau, WI, would be removed as the airport no longer meets the requirements for this airspace.

Airspace reconfiguration is necessary due to the decommissioning of NDBs, cancellation of NDB approaches, and implementation of RNAV procedures at the above airports. Controlled airspace is necessary for the safety and management of the standard instrument approach procedures for IFR operations at the airports.

Class E airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AGL WI E2 Wausau, WI [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL WI E5 Antigo, WI [Amended]

Langlade County Airport, WI
(Lat. 45°09′14″ N., long. 89°06′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Langlade County Airport.

AGL WI E5 Ashland, WI [Amended]

John F. Kennedy Memorial Airport, WI
(Lat. 46°32′55″ N., long. 90°55′08″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of John F. Kennedy Memorial Airport, and within 2.9 miles each side of the 201° bearing from the airport extending from the 7.0-mile radius to 8.2 miles southwest of the airport.

* * * * *

AGL WI E5 Black River Falls, WI [Amended]

Black River Falls Area Airport
(Lat. 44°15′03″ N., long. 90°51′19″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Black River Falls Area Airport, and within 2 miles each side of the 081° bearing from the airport extending from the 7.1-mile radius to 11.4 miles east of the airport, and within 2 miles each side of the 260° bearing from the airport extending from the 7.1-mile radius to 11.7 miles west of the airport.

* * * * *

AGL WI E5 Cable Union, WI [Amended]

Cable Union Airport, WI
(Lat. 46°11′42″ N., long. 91°14′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Cable Union Airport.

* * * * *

AGL WI E5 Cumberland, WI [Amended]

Cumberland Municipal Airport, WI
(Lat. 45°30′22″ N., long. 91°58′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Cumberland Municipal Airport, and within 2 miles each side of the 091° bearing from the airport extending from the 6.4-mile radius to 10.2 miles east of the airport, and within 2 miles each side of the 270° bearing from the airport extending from the 6.4-mile radius to 10.2 miles west of the airport.

* * * * *

AGL WI E5 Eagle River, WI [Amended]

Eagle River Union Airport, WI
(Lat. 45°55′56″ N., long. 89°16′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Eagle River Union Airport, and within 2 miles each side of the 225° bearing from the airport extending from the 6.5-mile radius to 9.2 miles southwest of the airport.

* * * * *

AGL WI E5 Hayward, WI [Amended]

Sawyer County Airport, WI
(Lat. 46°01′31″ N., long. 91°26′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Sawyer County Airport, and within 2 miles each side of the 025° bearing from the airport extending from the 6.6-mile radius to 8.5 miles northeast of the airport.

* * * * *

AGL WI E5 Wausau, WI [Amended]

Wausau Downtown Airport, WI
(Lat. 44°55′35″ N., long. 89°37′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Wausau Downtown Airport.

Issued in Fort Worth, Texas, on July 29, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–18773 Filed 8–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 206

[Docket No. FR–5353–N–02]

RIN 2502–AI79

Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgage Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On May 19, 2016, HUD published in the **Federal Register**, a proposed rule that would codify several significant changes to FHA's Home Equity Conversion Mortgage program that were previously issued under the authority granted to HUD in the Housing and Economic Recovery Act of 2008 and the Reverse Mortgage Stabilization Act of 2013, and to make additional regulatory changes. The Home Equity Conversion Mortgage program is FHA's reverse mortgage program that enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the Home Equity Conversion Mortgage program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. This document opens the public comment period solely for the provision addressed in this document to address a suggested change offered during the public comment period for the proposed rule regarding the lender's option to file a claim when the loan balance reaches 98 percent of the maximum claim amount.

DATES: *Comment Due Date:* September 12, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the document. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION, CONTACT: Karin Hill, Senior Policy Advisor, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9282, Washington, DC 20410; telephone number 202–402–3084 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The HECM Program

On May 19, 2016, at 81 FR 31769, HUD published a document that proposed to amend its regulations, at 24 CFR parts 30 and 206, that govern HUD's reverse mortgage program, called the Home Equity Conversion Mortgage (HECM) program. The HECM program allows eligible borrowers, 62 years of age or older, to convert the equity in their homes into liquid assets. The withdrawal of equity may take a variety of forms, as authorized by the National Housing Act (NHA) and selected by the borrower. The home, which serves as security for the FHA-insured mortgage, must be, and must continue to be, the borrower's principal residence during the life of the borrower. For adjustable interest rate HECMs, equity payments to the borrower may be in the form of monthly disbursements for life or a fixed term of years, disbursements from a line of credit advance or a combination of monthly disbursements and a line of credit. For fixed interest rate HECMs, equity payments to the borrower must be in the form of a single lump sum disbursement at closing.

The maximum amount of equity in the home that is available to a borrower under a HECM loan is the "principal limit" that is calculated for that loan. The borrower retains ownership of the property and may sell the home at any time keeping any residual sale proceeds in excess of the outstanding loan balance. Until the mortgage is repaid, and regardless of whether or not additional disbursements under the mortgage are permissible, interest on the mortgage, mortgage insurance premiums, and servicing charges, where applicable, continue to accrue.

The subject of this document regards the mortgagee's election of the assignment option as provided in § 206.107(a). This section gives the mortgagee an option, before the mortgage is submitted for insurance endorsement, to select either: (1) The assignment option, which allows the mortgagee to assign the HECM to the Secretary if the mortgage balance is equal to or greater than 98 percent of the maximum claim amount; or (2) the shared premium option, which allows the mortgagee to retain a portion of the monthly mortgage insurance premiums (MIP) but does not allow the mortgagee to assign the mortgage unless the mortgagee fails to make payments and the Secretary demands assignment. Under the assignment option, the mortgagee may only assign the mortgage to the Secretary if the following are also true: (1) The mortgagee is current in making the required payments to the mortgagor; (2) the mortgagee is current in making the required MIP payments to the Secretary; (3) the mortgage is not due and payable; and (4) the mortgage is a first lien of record and title to the property securing the mortgage is good and marketable.

B. The Proposed Rule and the Public Comment

The May 19, 2016, proposed rule proposed to codify a number of changes that had been implemented through mortgagee letters under the authority of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA) and the Reverse Mortgage Stabilization Act of 2013 (Pub. L. 113–29, approved August 9, 2013) (RMSA).

The public comment period on the proposed rule closed on July 18, 2016. All public comments submitted to date can be found at *https://www.regulations.gov/document?D=HUD-2016-0052-0001,* and each public comment is assigned a number that begins with HUD–2016–0052. On June 23, 2016, a public commenter (HUD–2016–0052–0010) brought to HUD's attention a suggested change to the HECM program's policy that grants the mortgagee the option to assign a HECM loan to FHA if the outstanding loan balance is equal to or greater than 98 percent of the maximum claim amount. The commenter stated that, in some cases, a mortgagee may decline to file a claim in this scenario if the property value has risen rapidly and the loan has an above-market rate. The commentator concluded that lenders in this way have a "put option" and "can choose to keep the best loans and make claims for the worst ones". In order to address this issue, the commenter suggested that HUD require that an assignment claim be made when the loans reach 98 percent of the maximum claim amount. HUD seeks public comment on the feasibility of this proposal as HUD is considering whether to adopt it.

II. Proposed Approach To Require Claims Be Made at 98 Percent of Maximum Claim Amount

Through this document, HUD solicits public comment solely on the issue of requiring mortgagees to file a claim when the HECM loan reaches 98 percent of the maximum claim amount. If HUD were to implement this proposal, HUD would amend § 206.107(a) to require the mortgagee to assign the mortgage to the Commissioner if the mortgage balance is equal to or greater than 98 percent of the maximum claim amount, or the mortgagor has requested a payment which exceeds the difference between the maximum claim amount and the mortgage balance.

By proposing the change to the assignment option suggested by the public commenter, HUD would not alter the other proposed changes to

§ 206.107(a). The criteria for assigning a HECM loan to the Commissioner in § 206.107(a) would remain, thereby still precluding the mortgagee from assigning the HECM loan if the loan or the mortgagee's servicing of the loan does not meet the criteria. Therefore, the proposal would require the mortgagee to assign the mortgage to the Commissioner at the given threshold unless the loan or the mortgagee's servicing of the loan does not meet the assignment criteria.

HUD is soliciting public comment solely on this proposal for a period of 30 days.

Dated: August 9, 2016.

Genger Charles,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2016–19255 Filed 8–10–16; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2016–0408; FRL–9950–46–OAR]

RIN 2060–AS89

Technical Correction to the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to correct an equation in an appendix in the National Ambient Air Quality Standards (NAAQS) for Particle Pollution. In the "Rules and Regulations" section of the **Federal Register**, we are approving the correction as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule. Equation 2 describes an intermediate step in the calculation of the design value for the annual $PM_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) NAAQS. This proposed action would correct a scrivener's error in one of the equations used to calculate an annual mean $PM_{2.5}$ concentration, to properly account for cases where a site does not have four complete quarters of data and passes one of two substitution tests. This change accurately reflects the intended calculation of the annual mean $PM_{2.5}$ design value and is consistent with the text elsewhere in the appendix.

DATES: Written comments must be received by September 12, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0408, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mr. Brett Gantt, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Air Quality Analysis Group (Mail Code: C304–04), Research Triangle Park, NC 27711; telephone number: (919) 541–5274; fax number: (919) 541–3613; email address: *gantt.brett@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this proposed rule?

This document proposes a revision in appendix N to correct a scrivener's error in an intermediate equation in the calculation of the annual $PM_{2.5}$ design value to properly account for cases where a site does not have four complete quarters of data in a specific year and passes the minimum quarterly value substitution test. We have published a direct final rule approving the revisions to appendix N in the "Rules and Regulations" section of this **Federal Register** because we view this as a non-controversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble of the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

This action applies to you if you are calculating the annual $PM_{2.5}$ design value for a site which does not have four complete quarters of data for a specific year and passes the minimum quarterly value substitution test.

III. Environmental Justice

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule does not relax the calculation of the annual $PM_{2.5}$ NAAQS design values and, therefore, will not cause decreases in the design values used to designate and classify nonattainment areas and assess progress towards meeting the NAAQS.

IV. Statutory and Executive Order Reviews

For a complete discussion of the administrative requirements applicable to this action, see the direct final rule in the "Rules and Regulations" section of this **Federal Register**.

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 3, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for Part 50 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In appendix N to part 50, in section 4.4, Equation 2 is revised to read as follows:

Appendix N to Part 50—Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$

* * * * *

4.4 Equations for the Annual $PM_{2.5}$ NAAQS

* * * * *

(b) * * *

Equation 2

$$\bar{X}_y = \frac{1}{n_{Q,y}} \sum_{q=1}^{n_{Q,y}} \bar{X}_{q,y}$$

Where:

$\bar{X}_y$ = the annual mean concentration for year y (y = 1, 2, or 3);

$n_{Q,y}$ = the number of complete quarters Q in year y; and

$\bar{X}_{q,y}$ = the mean for quarter q of year y (result of equation 1).

* * * * *

[FR Doc. 2016–19033 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0263; FRL–9950–35–Region 6]

Approval and Promulgation of Implementation Plans; Oklahoma; Disapproval of Prevention of Significant Deterioration for Particulate Matter Less Than 2.5 Micrometers—Significant Impact Levels and Significant Monitoring Concentration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove severable portions of the February 6, 2012, Oklahoma State Implementation Plan (SIP) submittal that establish certain *de minimis* thresholds for particulate matter less than 2.5 micrometers in diameter ($PM_{2.5}$) in the Prevention of Significant Deterioration (PSD) permitting requirements. Specifically, we are proposing to disapprove provisions that adopt and implement the $PM_{2.5}$ significant impact levels (SILs) and significant monitoring concentration (SMC); both of which were vacated by a federal court and subsequently removed from federal PSD regulations. We are proposing to disapprove the submitted provisions as inconsistent with federal laws and regulations for the permitting of $PM_{2.5}$. The EPA is proposing this disapproval under section 110 and part C of the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 12, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2012–0263, at *http://www.regulations.gov* or via email to *wiley.adina@epa.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Adina Wiley, (214) 665–2115, *wiley.adina@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Adina Wiley, (214) 665–2115, *wiley.adina@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Ms. Adina Wiley or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). These ambient standards currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

B. Prior Federal Action

Under Section 165(a) of the CAA, a major source may not commence construction unless the source has been issued a permit and has satisfied certain requirements. Among those requirements, the permit applicant must demonstrate that emissions from construction or operation of the facility will not cause, or contribute to, air pollution in excess of any increment, NAAQS, or any other applicable emission standard of performance. This statutory requirement has been incorporated into federal regulations at 40 CFR 51.166(k)(1). Moreover, to support this analysis, PSD permit applications must contain air quality monitoring data representing air quality in the area affected by the proposed source for the 1-year period preceding receipt of the application. This statutory requirement has been incorporated into federal regulations at 40 CFR 51.166(m)(ii)–(iv).

In 2010, the EPA promulgated regulations for SIPs concerning PSD permitting for $PM_{2.5}$ which included two voluntary screening tools: SILs and SMCs. 75 FR 64864 (Oct. 20, 2010). The SILs are screening tools that states with PSD SIPs apply in the issuance of a PSD permit to demonstrate that the proposed source's allowable emissions will not cause or contribute to a violation of the NAAQS or increment. The SMC has been used to exempt sources from the requirement in the CAA to collect preconstruction monitoring data for up to 1 year before submitting a permit application in order to help determine existing ambient air quality. 78 FR 73699 (Dec. 9, 2013).

Sierra Club filed a petition for review of the PSD regulations containing the $PM_{2.5}$ SILs and SMC with the United States Court of Appeals for the District of Columbia Circuit (the Court). On January 22, 2013, the Court issued an opinion granting a request from the EPA to vacate and remand to the EPA portions of the October 20, 2010, PSD regulations establishing the $PM_{2.5}$ SIL and further vacating the portions of the PSD regulations establishing a $PM_{2.5}$ SMC. *See, Sierra Club* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013).

In response to the Court's decision, the EPA amended its regulations to remove the affected $PM_{2.5}$ SIL regulations from the federal regulations and to replace the existing $PM_{2.5}$ SMC value with a "zero" threshold. 78 FR 73698 (Dec. 9, 2013). In that rulemaking, the EPA removed the regulatory text related to the affected $PM_{2.5}$ SILs at sections 51.166(k)(2) and 52.21(k)(2). Although the Court vacated the $PM_{2.5}$ SMC provisions in 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), the EPA did not remove the affected regulatory text, but instead revised the concentration for the $PM_{2.5}$ SMC listed in sections 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) to zero micrograms per cubic meter (0 $\mu g/m^3$). Because 40 CFR 51.166(i)(5)(iii) and 40 CFR 52.21(i)(5)(iii) establish an exemption from air monitoring requirements for any pollutant "not listed in paragraph (i)(5)(i)," the EPA explained that it would not be appropriate to remove the reference to $PM_{2.5}$ in paragraph (i)(5)(i). Were the EPA to completely remove $PM_{2.5}$ from the list of pollutants in sections 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) of the PSD regulations, $PM_{2.5}$ would no longer be a listed pollutant and the paragraph (iii) provision could be interpreted as giving reviewing authorities the discretion to exempt permit applicants from the requirement to conduct monitoring for $PM_{2.5}$, in contravention of the Court's decision and the CAA. Instead, the EPA revised the concentration listed in sections 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) to "0" micrograms per cubic meter ($\mu g/m^3$). This means that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the $PM_{2.5}$ monitoring requirements at 40 CFR 52.21(m).

C. Oklahoma's Submittal

On February 6, 2012, Oklahoma submitted revisions to its PSD SIP at OAC 252:100–8–33(c)(1)(C) that adopted provisions substantively identical to the EPA PSD SIP's requirement for $PM_{2.5}$ PSD SMC. 40 CFR 51.166(i)(5)(i). The February 6, 2012, submittal also included revisions to OAC 252:100–8–35(a)(2) that adopted provisions substantively identical to the EPA PSD SIP's requirements for $PM_{2.5}$ PSD SILs. 40 CFR 51.166(k)(2). The February 6, 2012, submittal included other revisions to the Oklahoma SIP that are severable from the voluntary PSD exemptions. Our Technical Support Document (TSD), available in the rulemaking docket, identifies the separate EPA actions addressing the remainder of the February 6, 2012 submittal.

II. The EPA's Evaluation

Our analysis, available in our TSD, finds that the State of Oklahoma adopted and submitted on February 6, 2012, revisions to the Oklahoma SIP that were substantively consistent with the voluntary exemptions from PSD monitoring at 40 CFR 51.166(i)(5)(i) and the requirements for a source impact analysis at 40 CFR 51.166(k)(2) promulgated on October 20, 2010. Subsequent to the submittal of these provisions, the Court vacated and remanded these provisions to the EPA. On December 9, 2013, we promulgated revisions to the PSD SIP rules that removed the vacated $PM_{2.5}$ SILs provision and replaced the existing $PM_{2.5}$ SMC value with a "zero" threshold level at 40 CFR 51.166. Because the $PM_{2.5}$ SILs and SMC are no longer valid exemptions from the requirements of a PSD SIP, we propose to disapprove these revisions submitted to be included in the Oklahoma PSD SIP as they are inconsistent with the federal statutory and regulatory permitting requirements for $PM_{2.5}$.

Disapproval of the submitted $PM_{2.5}$ SILs at OAC 252:100–8–35(a)(2) ensures that the provisions at OAC 252:100–8–35(a)(1) [1] in the existing SIP continue to apply to $PM_{2.5}$. Namely, that the owner or operator of the proposed source or modification shall demonstrate that, as of the source's start-up date, allowable emissions increases from that source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) would not cause or contribute to any increase in ambient concentrations that would exceed any NAAQS in any air quality control region; or the remaining available PSD increment for the specified air contaminants in any area, as determined by the Director of the Oklahoma Department of Environmental Quality.

Disapproval of the submitted $PM_{2.5}$ SMC at OAC 252:100–8–33(c)(1) means that $PM_{2.5}$ will not be a listed pollutant in the state's requirement for ambient monitoring data, and would appear to allow PSD permit applicants to avoid submitting $PM_{2.5}$ monitoring data as part of their permit application. To address this concern, the Oklahoma Department of Environmental Quality submitted a letter on February 25, 2016, that demonstrated the State retains authority to require pre- and post-construction PSD monitoring for $PM_{2.5}$ under the Oklahoma PSD SIP in the event that the EPA disapproves OAC 252:100–8–33(c)(1). Specifically, the SIP, under OAC 252:100–8–35.1(b)(3),[2] grants the ODEQ Director the authority to request information regarding the air quality impact of the source or modification. The ODEQ interprets this SIP provision to grant the Director the authority to request monitoring data for $PM_{2.5}$ as required under 40 CFR 51.166(m). Further, as noted in our December 9, 2013, final rule, any State regulations or approved SIP provisions adopting the $PM_{2.5}$ SIL and SMC are unlawful and may not be applied even prior to their removal from the applicable State regulations or SIP. *See* 78 FR 73698, 73700. Because reliance on the $PM_{2.5}$ SIL and SMC has been deemed unlawful, and because the State has provided a letter demonstrating underlying authority in the Oklahoma SIP at OAC 252:100–8–35.1(b)(3) to require pre- and post-construction monitoring for $PM_{2.5}$, we have determined it is appropriate to disapprove the submitted $PM_{2.5}$ SMC provisions at OAC 252:100–8–33(c)(1).

The EPA has an obligation under section 110 of the CAA to act on submitted SIP revisions unless these revisions are withdrawn by the State. Therefore, the EPA has a duty to act on the submitted Oklahoma provisions pertaining to the $PM_{2.5}$ SILs and SMC, because these provisions were submitted for EPA's review on February 6, 2012, and the state has not withdrawn the portion of the SIP submission containing these provisions. Our proposed action today will disapprove this portion of the February 6, 2012 SIP submission because these provisions are inconsistent with the federal statutory and regulatory SIP permitting requirements for $PM_{2.5}$.

III. Proposed Action

We are proposing to disapprove severable portions of the February 6, 2012, Oklahoma SIP submittal establishing the voluntary $PM_{2.5}$ SILs provision and SMC. The EPA has made the preliminary determination that these submitted revisions to the Oklahoma SIP are disapprovable because they establish permitting SIP requirements that are inconsistent with the federal statutory and regulatory permitting requirements for $PM_{2.5}$. Therefore, under section 110 and part C of the CAA, and for the reasons presented above, the EPA is proposing to disapprove the following revisions:

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[1] The EPA proposed approval of OAC 252:100–8–35(a)(1) on June 30, 2016, as consistent with federal PSD requirements. *See* 81 FR 42587.

[2] The EPA proposed approval of OAC 252:100–8–35.1(b)(3) on June 30, 2016, as consistent with federal PSD requirements. *See* 81 FR 42587.

- Substantive revisions to the Oklahoma SIP at OAC 252:100–8–33(c)(1)(C) establishing the $PM_{2.5}$ SMC as submitted on February 6, 2012; and
- Substantive revisions to the Oklahoma PSD program in OAC 252:100–8–35(a)(2) establishing the $PM_{2.5}$ PSD SILs provision as submitted on February 6, 2012.

The EPA is proposing to disapprove the revisions listed because the submitted provisions are inconsistent with the federal statutory and regulatory permitting requirements for $PM_{2.5}$. Upon finalization of this disapproval owners or operators of a proposed source or modification will continue to satisfy the source impact analysis provisions for $PM_{2.5}$ as required under the Oklahoma SIP at OAC 252:100–8–35(a)(1). Additionally, the State of Oklahoma would continue to have the necessary authority to require monitoring of $PM_{2.5}$ under the Oklahoma SIP at OAC 252:100–8–35.1(b)(3) consistent with the provisions of 40 CFR 52.21(m). Finalization of this proposed disapproval will not require the EPA to promulgate a Federal Implementation Plan, because the Oklahoma PSD program will continue to satisfy the Federal PSD SIP requirements for $PM_{2.5}$ monitoring and source impact analysis. We are proposing this disapproval under section 110 and part C of the Act; as such, the EPA will not impose sanctions as a result of a final disapproval.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action proposes to disapprove submitted revisions that are no longer consistent with federal laws and regulations for the regulation and permitting of $PM_{2.5}$.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action proposes to disapprove submitted revisions that are no longer consistent with federal laws and regulations for the regulation and permitting of $PM_{2.5}$, and therefore will have no impact on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action proposes to disapprove submitted revisions that are no longer consistent with federal laws and regulations for the regulation and permitting of $PM_{2.5}$, and therefore will have no impact on small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action proposes to disapprove provisions of state law that are no longer consistent with federal law for the regulation and permitting of $PM_{2.5}$; there are no requirements or responsibilities added or removed from Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it disapproves state permitting provisions that are inconsistent with federal laws and regulations for the regulation and permitting of $PM_{2.5}$.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action is not subject to Executive Order 12898 because it disapproves state permitting provisions that are inconsistent with federal laws and regulations for the regulation and permitting of $PM_{2.5}$.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 29, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–18895 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2016–0176; FRL–9950–12–Region 6]

Arkansas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Arkansas has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final authorization to the State of Arkansas. In the "Rules and Regulations" section

of this **Federal Register**, EPA is authorizing the changes by direct final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless we get written comments which oppose this authorization during the comment period, the direct final rule will become effective 60 days after publication and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by September 12, 2016.

ADDRESSES: Submit any comments identified by Docket ID No. EPA–R06–RCRA–2016–0176, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: patterson.alima@epa.gov.*
3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.
4. *Hand Delivery or Courier.* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Permit Section (RPM), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov*, or email. Direct your comment to Docket No. EPA–R06–RCRA–2016–0176. The Federal *regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy Arkansas's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Arkansas Department of Environmental Quality, 8101 Interstate 30, Little Rock, Arkansas 72219–8913, (501) 682–0876. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6, Regional Authorization Coordinator, RCRA Permits Section (RPM), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533 and Email address *patterson.alima@epa.gov.*

SUPPLEMENTARY INFORMATION:

For additional information, please see the direct final published in the "Rules and Regulations" section of today's **Federal Register**.

Dated: July 14, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–18432 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 212, 215, 234, 239, and 252

[Docket DARS–2016–0028]

RIN 0750–AJ01

Defense Federal Acquisition Regulation Supplement: Procurement of Commercial Items (DFARS Case 2016–D006)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Years 2013 and 2016 relating to commercial item acquisitions.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 11, 2016, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016–D006, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2016–D006" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2016–D006." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2016–D006" on your attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2016–D006 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, telephone 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement the requirements of sections 851 through 853 and 855 through 857 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92, enacted November 25, 2015), as well as the requirements of section 831 of the NDAA for FY 2013 (Pub. L. 112–239, enacted January 2, 2013). This rule also provides guidance to contracting officers to promote consistency and uniformity in the acquisition process.

On August 3, 2015, DoD published proposed DFARS rule 2013–D034 to implement the requirements of section 831 (80 FR 45918). Based on the comments received in response to that proposed rule, and in order to implement the requirements in sections 851 through 853 and 855 through 857 of the NDAA for FY 2016, DFARS rule

2013–D034 was closed into this proposed DFARS rule.

II. Discussion and Analysis

A. Proposed DFARS Revisions

This rule proposes to amend the DFARS as follows:

1. Definitions of "market prices," "market research," "nontraditional defense contractor," "relevant sales data," and "uncertified cost data" are added.
2. DFARS 212.102, Applicability, is amended to instruct contracting officers on the treatment of prior commercial item determinations and nontraditional defense contractors.
3. DFARS 212.209, Determination of price reasonableness, is added to provide a hierarchy of data for contracting officers to consider when making determinations of price reasonableness.
4. DFARS subpart 212.72, Limitation on conversion of procurement from commercial acquisition procedures, is added.
5. DFARS 215.402, Pricing policy, is amended to provide information regarding the contracting officer's responsibility for determining if the information provided by the offeror is sufficient to determine price reasonableness.
6. DFARS 215.403–1, Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35), is amended to provide a reference to 212.102 regarding prior commercial item determinations.
7. DFARS 215.404–1, Proposal analysis techniques, is amended to supplement the proposal analysis procedures identified in the FAR.
8. DFARS 234.7002, Policy, is amended to incorporate the revisions in section 852 of the NDAA for FY 2016.
9. DFARS 239.101, Policy, is amended to incorporate the revisions in section 855 of the NDAA for FY 2016.
10. DFARS provisions 252.215–70XX, 252.215–70YY, and 252.215–70ZZ are added.

B. Analysis of Public Comments on Proposed DFARS Rule 2013–D034

Fourteen respondents submitted comments in response to proposed DFARS rule 2013–D034. The major issues identified by the respondents in response to DFARS rule 2013–D034 are addressed as follows under this proposed rule:

Comment: A number of the respondents stated that the rule is inconsistent with statute and Congressional intent, and DoD should wait for the NDAA for FY 2016.

Response: Proposed rule 2013–D034 was drafted to implement the statutory requirements from section 831 of the NDAA for FY 2013 to issue guidance and standards on the use of the commercial item acquisition authority under 10 U.S.C. 2306a and 2379. The rule was issued to solicit feedback on the language and direction of that rule. DoD has considered the comments received on proposed rule 2013–D034, as well as the revised statutory language from sections 851–853 and 855–857 of the NDAA for FY 2016, and has closed DFARS rule 2013–D034 into this proposed rule.

Comment: A number of respondents commented that proposed rule 2013–D034 would have a potential negative effect on research and development (R&D) and technology industries.

Response: This proposed rule implements the authority provided under section 857 of the NDAA for FY 2016 to treat supplies and services provided by nontraditional defense contractors as commercial items, which will expand opportunities for R&D and technology firms to do business with DoD.

Comment: A number of respondents asserted that proposed rule 2013–D034 would restrict what items qualify for commercial item determinations, and that the rule would eliminate "of a type" and "newly offered for sale" from consideration for acquisition under commercial item procedures.

Response: The rule incorporates the requirements for commercial item determinations set forth under section 851 of the NDAA for FY 2016. Regulations for commercial item determinations for "items of a type" or "items newly offered for sale" are unchanged by this rule.

Comment: A number of respondents expressed concern that proposed rule 2013–D034 would exclude readily available data to determine commerciality.

Response: In accordance with section 831 of the NDAA for FY 2013, this rule will ensure that in cases in which uncertified cost information is required, the information shall be provided in the form in which it is regularly maintained by the offeror in its business operations. Further, in accordance with section 855 of the NDAA for FY 2016, this rule directs that market research shall be used, where appropriate, to inform price reasonableness determinations. Additionally, DoD is establishing a cadre of experts to provide expert advice to the acquisition workforce in assisting with commercial item and price reasonableness determinations.

Comment: A number of respondents stated that proposed rule 2013–D034 required an offeror to obtain inappropriate subcontractor data in order to make commerciality determinations and price reasonableness determinations.

Response: This proposed rule does not change the existing Federal Acquisition Regulation (FAR) requirement that offerors shall obtain from subcontractors whatever information is necessary to support a determination of price reasonableness. Further, this rule provides that no cost information may be required from a prospective subcontractor in any case in which there are sufficient nongovernment sales of the same item to establish reasonableness of price.

Comment: A number of respondents took exception to the definition of "market-based pricing" in proposed rule 2013–D034.

Response: The definition of market-based pricing in proposed DFARS rule 2013–D034 has not been retained in this proposed rule.

Comment: A number of respondents took exception to the treatment of modified commercial items and catalog items in proposed rule 2013–D034.

Response: This rule focuses on obtaining appropriate data for determinations of price reasonableness, and provides for the consideration of the same or similar items under comparable and differing terms and conditions, and catalog prices, when regularly maintained and supported by relevant sales data, to serve as the basis for price reasonableness determinations.

Comment: A number of respondents did not agree with the requirement for sales data to support a commerciality determination in proposed rule 2013–D034.

Response: This proposed rule does not address additional requirements for offerors to provide sales data to support a commerciality determination. This rule expands the use of FAR part 12 procedures. In accordance with section 853 of the NDAA for FY 2016, contracting officers may presume that a prior commercial item determination made by a military department, a Defense agency, or another component of the Department of Defense shall serve as a determination for subsequent procurements. Further, in accordance with section 857 of the NDAA for FY 2016, supplies and services provided by nontraditional defense contractors may be treated as commercial items.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

The objective of this proposed rule is to implement section 831 of the NDAA for FY 2013 (Pub. L. 112–239) and sections 851 through 853 and 855 through 857 of the NDAA for FY 2016 (Pub. L. 114–92). Sections 831, 851, and 853 address requirements related to commercial acquisitions. Specifically, section 831 provides guidance and training related to evaluation of price reasonableness and requirements for requests for uncertified cost information for the purposes of evaluating price reasonableness. Section 851 provides that a contracting officer may presume that a prior DoD commercial item determination made by DoD shall service as a determination for subsequent procurements of such items. Section 853 provides that a contracting officer shall consider evidence provided by an offeror of recent purchase prices paid by the Government for the same or similar commercial items when establishing price reasonableness, subject to certain conditions.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT)

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Director, Defense Procurement and Acquisition Policy (DPAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, with the Administrator for the Office of Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

C. Determination

To implement section 831 of the NDAA for FY 2013 and sections 851 and 853 of the NDAA for FY 2016, DoD is proposing three new DFARS provisions: DFARS 252.215–70XX, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data; DFARS 252.215–70YY, Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor; and 252.215–70ZZ, Requirements for Submission of Proposals via Electronic Media.

DFARS 252.215–70XX allows for offerors to submit a written request for an exception from the requirement to submit certified cost or pricing data, by submitting specific information to support a commercial item exception or an exception based on prices set by law or regulation. DFARS 252.215–70YY and DFARS 252.215–70ZZ are only used in conjunction with DFARS 252.215–70XX and only specify when a proposal is required to be submitted to the administrative contracting officer or cost auditor or if submission of the cost portion is required via certain electronic media.

Given that section 831 of the NDAA for FY 2013 and sections 851 and 853 of the NDAA for FY 2016 were enacted to address requirements related to the treatment of commercial items and submission of uncertified cost or pricing data to support evaluations of price reasonableness for commercial items, DoD intends to determine that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, including COTS items. An exception for contracts for the acquisition of commercial items, including COTS items, would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law. DoD does not intend to make a determination to apply the requirements to acquisitions below the SAT.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide additional guidance concerning commercial item determinations and the appropriate amount and type of other than certified cost or pricing information that contracting officers must require an offeror to submit in order to determine whether proposed prices for commercial items are fair and reasonable.

The objective of this rule is to implement the requirements of sections 851 through 853 and 855 through 857 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92, enacted November 25, 2015), as well as the requirements of section 831 of the NDAA for FY 2013 (Pub. L. 112–239, enacted January 2, 2013).

According to data available in the Federal Procurement Data System for fiscal year 2015, DoD awarded 51,796 contracts to 21,073 unique vendors using commercial procedures. Of those contracts, 29,637 contracts (approximately 57%) were awarded to 14,286 unique small businesses (approximately 68%).

This proposed rule does not impose any reporting, recordkeeping, or other compliance requirements, because the rule does not add to or remove any of the existing requirements for the submission of other than certified cost or pricing data for the purpose of determining the reasonableness of prices proposed for commercial items.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the requirements.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2016–D006), in correspondence.

VI. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 202, 212, 215, 234, 239, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 212, 215, 234, 239, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 202, 212, 215, 234, 239, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding, in alphabetical order, the definition of "Uncertified cost data" to read as follows:

202.101 Definitions.

*   *   *   *   *

Uncertified cost data means the subset of "data other than certified cost or pricing data" (see FAR 2.101) that relates to cost.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Section 212.001 is added to read as follows:

212.001 Definitions.

As used in this part—

Market research means a review of existing systems, subsystems, capabilities, and technologies that are available or could be made available to meet the needs of DoD in whole or in part. The review may include any of the techniques for conducting market research provided in section 10.002(b)(2) of the FAR and shall include, at a minimum, contacting knowledgeable individuals in Government and industry regarding existing market capabilities (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92)).

Nontraditional defense contractor means an entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement or transaction (10 U.S.C. 2302(9)).

■ 4. Amend section 212.102 by—

■ a. Adding a paragraph (a)(i) heading; and

■ b. Adding paragraphs (a)(ii), (a)(iii), and (a)(iv).

The additions read as follows:

212.102 Applicability.

(a)(i) *Commercial item determination.*

* * *

(ii) Follow the procedures at PGI 212.102(a) regarding file documentation.

(iii) *Prior commercial item determination.* This section implements 10 U.S.C. 2306a(b)(4).

(A) The contracting officer may presume that a prior commercial item determination made by a military department, a defense agency, or another component of DoD shall serve as a determination for subsequent procurements of such item.

(B) If the contracting officer does not make the presumption described in paragraph (a)(iii)(A) of this section and instead chooses to proceed with a procurement of an item previously determined to be a commercial item using procedures other than the procedures authorized for the procurement of a commercial item, the contracting officer shall request a review of the commercial item determination by the head of the contracting activity that will conduct the procurement.

(C) Not later than 30 days after receiving a request for review of a commercial item determination under paragraph (a)(iii)(B) of this section, the head of a contracting activity shall—

(1) Confirm that the prior determination was appropriate and still applicable; or

(2) Issue a revised determination with a written explanation of the basis for the revision (see 212.72).

(iv) *Nontraditional defense contractors.* Supplies and services provided by nontraditional defense contractors may be treated as commercial items (10 U.S.C. 2380A). This permissive authority is intended to enhance defense innovation and create incentives for cutting-edge firms to do business with DoD. It is not intended to recategorize current noncommercial items, however, when appropriate, contracting officers may consider applying commercial item procedures to the procurement of supplies and services from business segments that meet the definition of "nontraditional defense contractor" even though they have been established under traditional defense contractors. The decision to apply commercial item procedures to the procurement of supplies and services from nontraditional defense contractors does not constitute a requirement for a commercial item determination and does not mean the item is commercial.

■ 5. Section 212.209 is added to read as follows:

212.209 Determination of price reasonableness.

(a) Market research shall be used, where appropriate, to inform price reasonableness determinations.

(b) If the contracting officer determines that the information obtained through market research pursuant to paragraph (a) of this section, is insufficient to determine the reasonableness of price, the contracting officer shall consider information submitted by the offeror of recent purchase prices paid by the Government or commercial customers for the same or similar commercial items under comparable terms and conditions in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison. The contracting officer shall consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (10 U.S.C. 2306a(b)).

(c) If the contracting officer determines that the offeror cannot provide sufficient information as described in paragraph (b) of this section to determine the reasonableness of price, the contracting officer should request the offeror to submit information on—

(1) Prices paid for the same or similar items sold under different terms and conditions;

(2) Prices paid for similar levels of work or effort on related products or services;

(3) Prices paid for alternative solutions or approaches; and

(4) Other relevant information that can serve as the basis for determining the reasonableness of price.

(d) Nothing in this section shall be construed to preclude the contracting officer from requiring the contractor to supply information that is sufficient to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement. If the contracting officer determines that the pricing information submitted is not sufficient to determine the reasonableness of price, the contracting officer may request other relevant information regarding the basis for price or cost, including uncertified cost data such as labor costs, material costs, and other direct and indirect costs.

■ 6. Amend section 212.301 by adding paragraph (f)(vi)(E) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vi) * * *

(E) Use the provision 252.215–70XX, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, as prescribed at 215.408(6)(i) to comply with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 853 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

(*1*) Use the basic provision as prescribed at 215.408(6)(i)(A).

(*2*) Use the alternate I provision as prescribed at 215.408(6)(i)(B).

■ 7. Add subpart 212.7X to read as follows:

Subpart 212.7X—Limitation on Conversion of Procurement From Commercial Acquisition Procedures

Sec.
212.7X00 Scope.
212.7X01 Procedures.

Subpart 212.7X—Limitation on Conversion of Procurement From Commercial Acquisition Procedures

212.7X00 Scope.

This subpart implements section 856 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

212.7X01 Procedures.

(a) *Limitation.* (1) For a procurement valued at more than $1 million, but less than $100 million, previously procured as a prime contract using FAR part 12 procedures based on a commercial item determination made by a military department, a defense agency, or another DoD component, prior to converting the procurement from commercial acquisition procedures to noncommercial acquisition procedures under FAR part 15, the contracting officer for the procurement shall determine in writing that—

(i) The earlier use of commercial acquisition procedures under FAR part 12 was in error or based on inadequate information; and

(ii) DoD will realize a cost savings compared to the cost of procuring a similar quantity or level of such item or service using commercial acquisition procedures.

(2) In the case of a procurement valued at more than $100 million, a contract may not be awarded pursuant to a conversion of the procurement described in paragraph (a)(1) of this section until—

(i) The head of the contracting activity approves the determination made under paragraph (1) of this section; and

(ii) A copy of the determination so approved is provided to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) In making a determination under paragraph (a) of this section, the determining official shall, at a minimum, consider the following factors:

(1) The estimated cost of research and development to be performed by the existing contractor to improve future products or services.

(2) The costs for DoD and the contractor in assessing and responding to data requests to support a conversion to noncommercial acquisition procedures.

(3) Changes in purchase quantities.

(4) Costs associated with potential procurement delays resulting from the conversion.

(c) The requirements of this subpart terminate November 25, 2020.

PART 215—CONTRACTING BY NEGOTIATION

■ 8. Section 215.401 is added to read as follows:

215.401 Definitions.

As used in this subpart—

Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Relevant sales data means information provided by an offeror of sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets or other adjustments).

■ 9. Amend section 215.402 by—

■ a. Adding paragraph (a)(i); and

■ b. Redesignating the introductory text as paragraph (a)(ii).

The addition reads as follows:

215.402 Pricing policy.

(a)(i) Pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239)—

(A) The contracting officer is responsible for determining if the information provided by the offeror is sufficient to determine price reasonableness. This responsibility includes determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price, and determining the extent of uncertified cost data that should be required in cases in which price information is not adequate;

(B) The contracting officer shall not limit the Government's ability to obtain any data that may be necessary to support a determination of fair and reasonable pricing by agreeing to contract terms that preclude obtaining necessary supporting information; and

(C) When obtaining uncertified cost data, the contracting officer shall require the offeror to provide the information in the form in which it is regularly maintained in the offeror's business operations.

* * * * *

■ 10. Amend section 215.403–1 by adding paragraph (c)(3)(C) to read as follows:

215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(3) * * *

(C) When applying the commercial item exception under FAR 15.403–1(b)(3), see 212.102(a)(iii) regarding prior commercial item determinations.

* * * * *

■ 11. Amend section 215.404–1 by—

■ a. Redesignating paragraphs (1), (2), and (2)(i) through (iv) as paragraphs (a)(i), (a)(ii), and (a)(ii)(A) through (D), respectively;

■ b. Adding a paragraph (a) heading; and

■ c. Adding paragraph (b).

The additions read as follows:

215.404–1 Proposal analysis techniques.

(a) *General.*

* * * * *

(b) *Price analysis for commercial and noncommercial items.* (i) In the absence of adequate price competition in response to the solicitation, pricing based on market prices is the preferred method to establish a fair and reasonable price.

(ii) If the contracting officer determines that the information obtained through market research is insufficient to determine the reasonableness of price, the contracting officer shall consider information submitted by the offeror of recent purchase prices paid by the Government or commercial customers for the same or similar commercial items under comparable terms and conditions in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison. The contracting officer shall consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (section 853 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92)).

(iii) If the contracting officer determines that the offeror cannot provide sufficient information as described in paragraph (b)(ii) of this section to determine the reasonableness of price, the contracting officer should request the offeror to submit information on—

(A) Prices paid for the same or similar items sold under different terms and conditions;

(B) Prices paid for similar levels of work or effort on related products or services;

(C) Prices paid for alternative solutions or approaches; and

(D) Other relevant information that can serve as the basis for determining the reasonableness of price.

(iv) If the contracting officer determines that the pricing information submitted is not sufficient to determine the reasonableness of price, the contracting officer may request other relevant information, to include cost data. However, no cost data may be required in any case in which there are sufficient nongovernment sales of the same item to establish reasonableness of price (section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239)).

(v) When evaluating pricing data, the contracting officer shall consider materially differing terms and conditions, quantities, and market and economic factors. For similar items, the contracting officer shall also consider material differences between the similar item and the item being procured (FAR 15.404–1(b)(2)(ii)(B)). Material differences are those that could reasonably be expected to influence the contracting officer's determination of price reasonableness. The contracting officer shall consider the following factors when evaluating the relevance of the information available:

(A) *Market prices.*

(B) *Age of data.* (*1*) Whether data is too old to be relevant depends on the industry (*e.g.*, rapidly evolving technologies), product maturity (*e.g.*, stable), economic factors (*e.g.*, new sellers in the marketplace), and various other considerations.

(*2*) A pending sale may be relevant if, in the judgement of the contracting officer, it is probable at the anticipated price, and the sale could reasonably be expected to materially influence the contracting officer's determination of price reasonableness. The contracting officer may consult with the cognizant ACOs as they may have information about future sales.

(C) *Volume and completeness of transaction data.* Data must include a sufficient number of transactions to represent the range of relevant sales to all types of customers. The data must also include key information, such as date, quantity sold, part number, part nomenclature, sales price, and customer. If the number of transactions is insufficient or the data is incomplete, the contracting officer shall request additional sales data to evaluate price reasonableness. If the contractor cannot provide sufficient sales data, the contracting officer shall request other relevant information.

(D) *Nature of transactions.* The nature of a sales transaction includes the information necessary to understand the transaction, such as terms and conditions, date, quantity sold, sale price, unique requirements, the type of customer (government, distributor, retail end-user, etc.), and related agreements. It also includes warranties, key product technical specifications, maintenance agreements, and preferred customer rewards.

(vi) The contracting officer shall consider catalog prices to be reliable when they are regularly maintained and supported by relevant sales data (including any related discounts, refunds, rebates, offsets, or other adjustments). The contracting officer may request that the offeror support differences between the proposed price(s), catalog price(s), and relevant sales data.

(vii) The contracting officer may consult with the DoD cadre of experts who are available to provide expert advice to the acquisition workforce in assisting with commercial item and price reasonableness determinations. The DoD cadre of experts is identified at PGI 215.404–2(a)(iii).

■ 12. Amend section 215.408 by—

■ a. In paragraph (3)(i)(A)(*1*), removing "FAR 52.215–20, Requirement for" and adding "DFARS 252.215–70XX, Requirements for Certified Cost or Pricing Data and" in its place;

■ b. In paragraph (3)(i)(A)(*2*), removing "FAR 52.215–20" and adding "DFARS 252.215–70XX" in its place;

■ c. Revising paragraph (3)(i)(B);

■ d. Redesignating paragraphs (*4*)(*i*), (*4*)(*ii*), and (*5*) as paragraphs (4)(i), (4)(ii), and (5), respectively; and

■ e. Adding paragraph (6).

The revisions and addition read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) * * *

(i)(A) * * *

(B) Do not use 252.225–7003 in lieu of DFARS 252.215–70XX in competitive acquisitions; and

* * * * *

(6) When reasonably certain that the submission of certified cost or pricing data or data other than certified cost or pricing data will be required—

(i) Use the basic or alternate of the provision at 252.215–70XX, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in lieu of the provision at FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

(A) Use the basic provision when submission of certified cost or pricing data is required to be in the FAR Table 15–2 format, or if it is anticipated, at the time of solicitation, that the submission of certified cost or pricing data may not be required.

(B) Use the alternate I provision to specify a format for certified cost or pricing data other than the format required by FAR Table 15–2;

(ii) Use the provision at 252.215–70YY, Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor, when using the basic or alternate of the provision at 252.215–70XX and copies of the proposal are to be sent to the ACO and contract auditor; and

(iii) Use the provision at 252.215–70ZZ, Requirements for Submission of Proposals via Electronic Media, when using the basic or alternate of the provision at 252.215–70XX and submission via electronic media is required.

PART 234—MAJOR SYSTEM ACQUISITION

■ 13. Amend section 234.7002 by—

■ a. In paragraph (a)(1)(i)(B), removing ";" and adding "; and" in its place:

■ b. Removing paragraph (a)(1)(ii);

■ c. Redesignating paragraph (a)(1)(iii) as paragraph (a)(1)(ii);

■ d. In paragraph (b), removing "may" and adding "shall" in its place, and removing "only if—" and adding "if—" in its place;

■ e. Revising paragraph (b)(2); and

■ f. In paragraph (c)(1), removing "only if—" and adding "if—" in its place;

■ g. Revising paragraph (c)(1)(ii); and

■ h. Revising paragraph (d).

The revisions read as follows:

234.7002 Policy.

* * * * *

(b) * * *

(2) The contracting officer determines in writing that the subsystem is a commercial item.

(c) * * *

(1) * * *

(ii) The contracting officer determines in writing that the component or spare part is a commercial item.

* * * * *

(d) *Relevant information.* This section implements 10 U.S.C. 2379.

(1) To the extent necessary to make a determination of price reasonableness, the contracting officer shall require the offeror to submit prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers.

(2) If the contracting officer determines that the offeror cannot provide sufficient information described in paragraph (d)(1) of this section to determine the reasonableness of price, the contracting officer shall request the offeror to submit information on—

(i) Prices paid for the same or similar items under different terms and conditions;

(ii) Prices paid for similar levels of work or effort on related products or services;

(iii) Prices paid for alternative solutions or approaches; and

(iv) Other relevant information that can serve as the basis for a price reasonableness determination.

(3) If the contracting officer determines that the information submitted pursuant to paragraphs (d)(1) and (2) of this section is not sufficient to determine the reasonableness of price, the contracting officer may request the offeror to submit other relevant information, including uncertified cost data. However, no uncertified cost data may be required in any case in which there are sufficient non-government sales of the same item to establish reasonableness of price.

(4) An offeror shall not be required to submit information described in paragraph (d)(3) of this section with regard to a commercially available off-the-shelf item. An offeror may be required to submit such information with regard to any other item that was developed exclusively at private expense only after the head of the contracting activity determines in writing that the information submitted pursuant to paragraphs (d)(1) and (2) of this section is not sufficient to determine the reasonableness of price.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 14. Revise section 239.101 to read as follows:

239.101 Policy.

(1) A contracting officer may not enter into a contract in excess of the simplified acquisition threshold for information technology products or services that are not commercial items unless the head of the contracting activity determines in writing that no commercial items are suitable to meet the agency's needs, as determined through the use of market research appropriate to the circumstances (see FAR 10.001(a)(3)) (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92)).

(2) See subpart 208.74 when acquiring commercial software or software maintenance.

(3) See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

PART 252—ACQUISITION OF INFORMATION TECHNOLOGY

■ 15. Add section 252.215–70XX to read as follows:

252.215–70XX Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

Basic. As prescribed in 215.408(6)(i) and (6)(i)(A), use the following provision:

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Basic (Date)

(a) *Definitions.* As used in this provision—

Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Nongovernment sales means sales of the supplies or services to nongovernmental entities for purposes other than governmental purposes.

Relevant sales data means information provided by an offeror of sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets, or other adjustments).

Sufficient nongovernment sales means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by FAR 15.404–1(b)(2)(ii)(B).

Uncertified cost data means the subset of "data other than certified cost or pricing data" (see FAR 2.101) that relates to cost.

(b) *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in the paragraphs (b)(1)(i) and (ii) of this section. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Exception for prices set by law or regulation.* Identification of the law or regulation establishing the prices offered. If the prices are controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same item or similar items have been sold in the commercial market. Such information shall include—

(A) For items previously determined to be commercial, the contract and military department, defense agency, or other DoD component that rendered such determination;

(B) For items priced based on a catalog—

(*1*) A copy of or identification of the Offeror's current catalog showing the price for that item; and

(*2*) Either of the following two statements included in the proposal:

(*i*) "The catalog pricing provided with this proposal is consistent with all relevant sales data (including any related discounts, refunds, rebates, offsets or other adjustments). Relevant sales data shall be made available upon request of the Contracting Officer."; or

(*ii*) "The catalog pricing provided with this proposal is not consistent with all relevant sales data, due to the following: *[Insert a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any related discounts, refunds, rebates, offsets, or other adjustments)].*";

(C) For items priced based on market pricing, a description of the nature of the commercial market, the methodology used to establish a market price, and all relevant sales data. The description shall be adequate to permit the Department of Defense to verify the accuracy of the description;

(D) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item; or

(E) For items provided by nontraditional defense contractors, a statement that the entity is not currently performing and has not performed, for at least the 1-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section.

(2) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and to determine the reasonableness of price.

(c) *Requirements for certified cost or pricing data.* If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–2 are incorporated as a mandatory format to be used in any resulting contract, unless the Contracting Officer and the Offeror agree to a different format and change this provision to use Alternate I.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

(d) *Requirements for data other than certified cost or pricing data.*

(1) Data other than certified cost or pricing data submitted in accordance with this provision shall include all data necessary to permit a determination that the proposed price is fair and reasonable, to include the requirements in DFARS 215.402(a)(i) and DFARS 215.404–1(b).

(2) In cases in which uncertified cost data is required, the information shall be provided in the form in which it is regularly maintained by the Offeror or prospective subcontractor in its business operations.

(3) The Offeror shall provide information described as follows: *[Insert description of the data and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.403–3].*

(4) Within 10 days of a written request from the Contracting Officer for additional information to support proposal analysis, the Offeror shall provide either the requested information, or a written explanation for the inability to fully comply.

(5) *Subcontract price evaluation.*

(i) Offerors shall obtain from subcontractors the information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215.

(ii) No cost information may be required from a prospective subcontractor in any case in which there are sufficient nongovernment sales of the same item to establish reasonableness of price.

(iii) If the Offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary—

(A) To support the conclusion that items are technically similar; and

(B) To explain any technical differences that account for variances between the proposed prices and the sales data presented.

(e) *Subcontracts.* The Offeror shall insert the substance of this provision, including this paragraph (e), in subcontracts exceeding the simplified acquisition threshold defined in FAR part 2. The Offeror shall require prospective subcontractors to adhere to the requirements of—

(1) Paragraphs (c) and (d) of this provision for subcontracts above the threshold for submission of certified cost or pricing data in FAR 15.403–4; and

(2) Paragraph (d) of this provision for subcontracts exceeding the simplified acquisition threshold defined in FAR part 2.

(End of provision)

Alternate I. As prescribed in 215.408(6)(i) and (6)(i)(B), use the following provision, which includes a different paragraph (c)(1).

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Alternate I (Date)

(a) *Definitions.* As used in this provision—

Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Nongovernment sales means sales of the supplies or services to nongovernmental entities for purposes other than governmental purposes.

Relevant sales data means information provided by an offeror of sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets, or other adjustments).

Sufficient nongovernment sales means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by FAR 15.404–1(b)(2)(ii)(B).

Uncertified cost data means the subset of "data other than certified cost or pricing data" (see FAR 2.101) that relates to cost.

(b) *Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Exception for price set by law or regulation.* Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same item or similar items have been sold in the commercial market. Such information shall include—

(A) For items previously determined to be commercial, the contract and military department, defense agency, or other DoD component that rendered such determination;

(B) For items priced based on a catalog—

(*1*) A copy of or identification of the Offeror's current catalog showing the price for that item; and

(*2*) Either of the following two statements included in the proposal:

(*i*) "The catalog pricing provided with this proposal is consistent with all relevant sales data (including any related discounts, refunds, rebates, offsets or other adjustments). Relevant sales data shall be made available upon request of the Contracting Officer."; or

(*ii*) "The catalog pricing provided with this proposal is not consistent with all relevant sales data, due to the following: *[Insert a detailed description of differences or* *inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any related discounts, refunds, rebates, offsets, or other adjustments)].";*

(C) For items priced based on market pricing, a description of the nature of the commercial market, the methodology used to establish a market price, and all relevant sales data. The description shall be adequate to permit the Department of Defense to verify the accuracy of the description;

(D) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item; or

(E) For items provided by nontraditional defense contractors, a statement that the entity is not currently performing and has not performed, for at least the 1-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section.

(2) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and to determine the reasonableness of price.

(c) *Requirements for certified cost or pricing data.* If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Offeror shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in the following format: *[Insert description of the data and format that are required, and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.408, Table 15–2, Note 2. The Contracting Officer shall insert the description at the time of issuing the solicitation or specify that the format regularly maintained by the offeror or prospective subcontractor in its business operations will be acceptable. The Contracting Officer may amend the description as the result of negotiations].*

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

(d) *Requirements for data other than certified cost or pricing data.*

(1) Data other than certified cost or pricing data submitted in accordance with this provision shall include all data necessary to permit a determination that the proposed price is fair and reasonable, to include the requirements in DFARS 215.402(a)(i) and DFARS 215.404–1(b).

(2) In cases in which uncertified cost data is required, the information shall be provided in the form in which it is regularly maintained by the Offeror or prospective subcontractor in its business operations.

(3) The Offeror shall provide information described as follows: *[Insert description of the data and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.403–63].*

(4) Within 10 days of a written request from the Contracting Officer for additional information to support proposal analysis, the Offeror shall provide either the requested information, or a written explanation for the inability to fully comply.

(5) *Subcontract price evaluation.* (i) Offerors shall obtain from subcontractors the information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215.

(ii) No cost information may be required from a prospective subcontractor in any case in which there are sufficient nongovernment sales of the same item to establish reasonableness of price.

(iii) If the Offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary—

(A) To support the conclusion that items are technically similar; and

(B) To explain any technical differences that account for variances between the proposed prices and the sales data presented.

(e) *Subcontracts.* The Offeror shall insert the substance of this provision, including this paragraph (e), in all subcontracts exceeding the simplified acquisition threshold defined in FAR part 2. The Offeror shall require prospective subcontractors to adhere to the requirements of—

(1) Paragraph (c) and (d) of this provision for subcontracts above the threshold for submission of certified cost or pricing data in FAR 15.403–4; and

(2) Paragraph (d) of this provision for subcontracts exceeding the simplified acquisition threshold defined in FAR part 2.

(End of provision)

■ 16. Add section 252.215–70YY to read as follows:

252.215–70YY Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor.

As prescribed in 215.408(6)(ii), use the following provision:

Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor (Date)

When the proposal is submitted, the Offeror shall also submit one copy each to—

(a) The Administrative Contracting Officer; and

(b) The Contract Auditor.

(End of provision)

■ 17. Add section 252.215–70ZZ to read as follows:

252.215–70ZZ Requirements for Submission of Proposals via Electronic Media.

As prescribed in 215.408(6)(iii), use the following provision:

Requirements for Submission of Proposals Via Electronic Media (Date)

The Offeror shall submit the cost portion of the proposal via the following electronic media: *[Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.].*

(End of provision)

[FR Doc. 2016–18704 Filed 8–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131113952–6673–01]

RIN 0648–BD78

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 16

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 16), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would revise the current seasonal prohibition on the use of black sea bass pot gear in the South Atlantic and add additional gear marking requirements for black sea bass pot gear. The purpose of this proposed rule is to reduce the adverse socioeconomic impacts from the current seasonal black sea bass pot gear prohibition while continuing to protect Endangered Species Act (ESA) listed whales in the South Atlantic. This proposed rule would also help better identify black sea bass pot gear in the South Atlantic.

DATES: Written comments must be received on or before September 12, 2016.

ADDRESSES: You may submit comments on the proposed rule, identified by

"NOAA–NMFS–2013–0165" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0165,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Regulatory Amendment 16, which includes an environmental impact statement (EIS), a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *https://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2013/reg_am16/index.html.*

Comments regarding the burden-hour estimates, clarity of the instructions, or other aspects of the collection-of-information requirements contained in this proposed rule (see the Classification section of the preamble) may be submitted in writing to Adam Bailey, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; or the Office of Management and Budget (OMB), by email at *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: Black sea bass is in the snapper-grouper fishery and is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

On December 4, 2013, NMFS published a notice of intent to prepare a draft EIS for Regulatory Amendment 16 and requested public comment (78 FR 72968). On October 23, 2015, the notice of availability for the draft EIS was published and public comment was also requested (80 FR 64409). The notice of availability for the final EIS for Regulatory Amendment 16 published on July 1, 2016 (81 FR 43198).

The black sea bass stock in the South Atlantic was most recently assessed through the Southeast Data, Assessment, and Review (SEDAR) stock assessment process in 2013 (SEDAR 25 Update). The SEDAR 25 Update determined that the black sea bass stock in the South Atlantic is not undergoing overfishing and is not overfished. The SEDAR 25 Update indicated that the black sea bass commercial and recreational sector annual catch limits (ACLs) could be increased without jeopardizing the health of the population, and as a result, the black sea bass commercial and recreational ACLs were increased through the final rule to implement Regulatory Amendment 19 to the FMP (78 FR 58249, September 23, 2013).

Additionally, Regulatory Amendment 19 established an annual prohibition on the use of black sea bass pots from November 1 through April 30. During this closure, no person is allowed to harvest or possess black sea bass in or from the South Atlantic exclusive economic zone (EEZ) either with sea bass pots or from a vessel with sea bass pots on board. In addition, sea bass pots must be removed from the water in the South Atlantic EEZ prior to November 1, and may not be on board a vessel in the South Atlantic EEZ during this seasonal closure. The black sea bass pot seasonal prohibition became effective on October 23, 2013.

Through Regulatory Amendment 19, the seasonal sea bass pot prohibition was established as a precautionary measure to prevent interactions between black sea bass pot gear and ESA-listed whales during periods of large whale migrations and during the right whale calving season off the U.S. southeastern coast. The large whale migration period and the right whale calving season in the South Atlantic extends from approximately November 1 through April 30, each year. Since 2010, black sea bass harvest levels have reached the commercial quota, thereby triggering accountability measures (AMs) to close the commercial sector. In recent years, these in-season commercial closures have occurred prior to November 1, the beginning of the right whale calving season, therefore, Council and NMFS actions to prevent black sea bass pot gear from being in the water during periods of higher whale concentrations had been unnecessary to restrict interactions between black sea bass pot fishers and ESA-listed whales. However, NMFS determined that the increase in the black sea bass commercial ACL implemented through Regulatory Amendment 19 could extend the commercial black sea bass fishing season beyond November 1, and into a time period when a higher concentration of endangered whales are known to migrate through black sea bass fishing grounds.

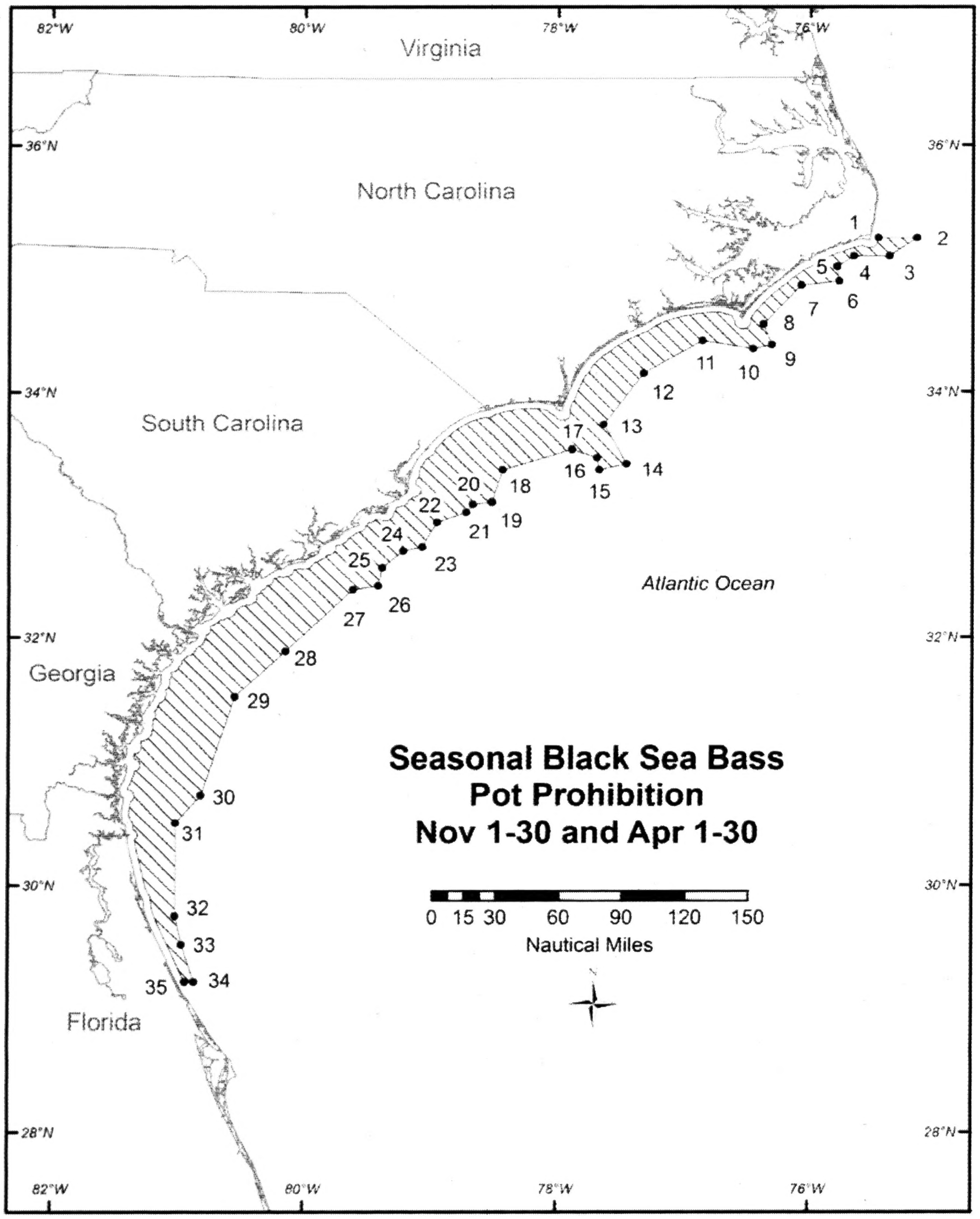
Management Measures Contained in This Proposed Rule

This proposed rule would implement modifications to the current black sea bass pot seasonal closure. This proposed rule would also modify the buoy line rope marking requirements for black sea bass pots.

Black Sea Bass Pot Gear Seasonal Prohibition

As established through Regulatory Amendment 19, black sea pot gear is prohibited in the South Atlantic EEZ annually from November 1 through April 30. This proposed rule would retain the November 1 through April 30 prohibition on the use of black sea bass pots, but would modify the boundaries of the prohibition. This rule would revise the South Atlantic EEZ-wide seasonal closure to a closure of two temporal and spatial components. The first closure period would be for the months of November and April, and the second closure period would be for the months of December through March each year. The first closure period is illustrated by the Figure 1 below. During November and April, the eastern boundary of the sea bass pot closed area off North and South Carolina is closer to shore than during the months of December through March.

Figure 1. November and April Black Sea Bass Pot Prohibition


82°W
80°W
78°W
76°W
36°N
34°N
32°N
30°N
28°N
Virginia
North Carolina
South Carolina
Georgia
Florida
Atlantic Ocean
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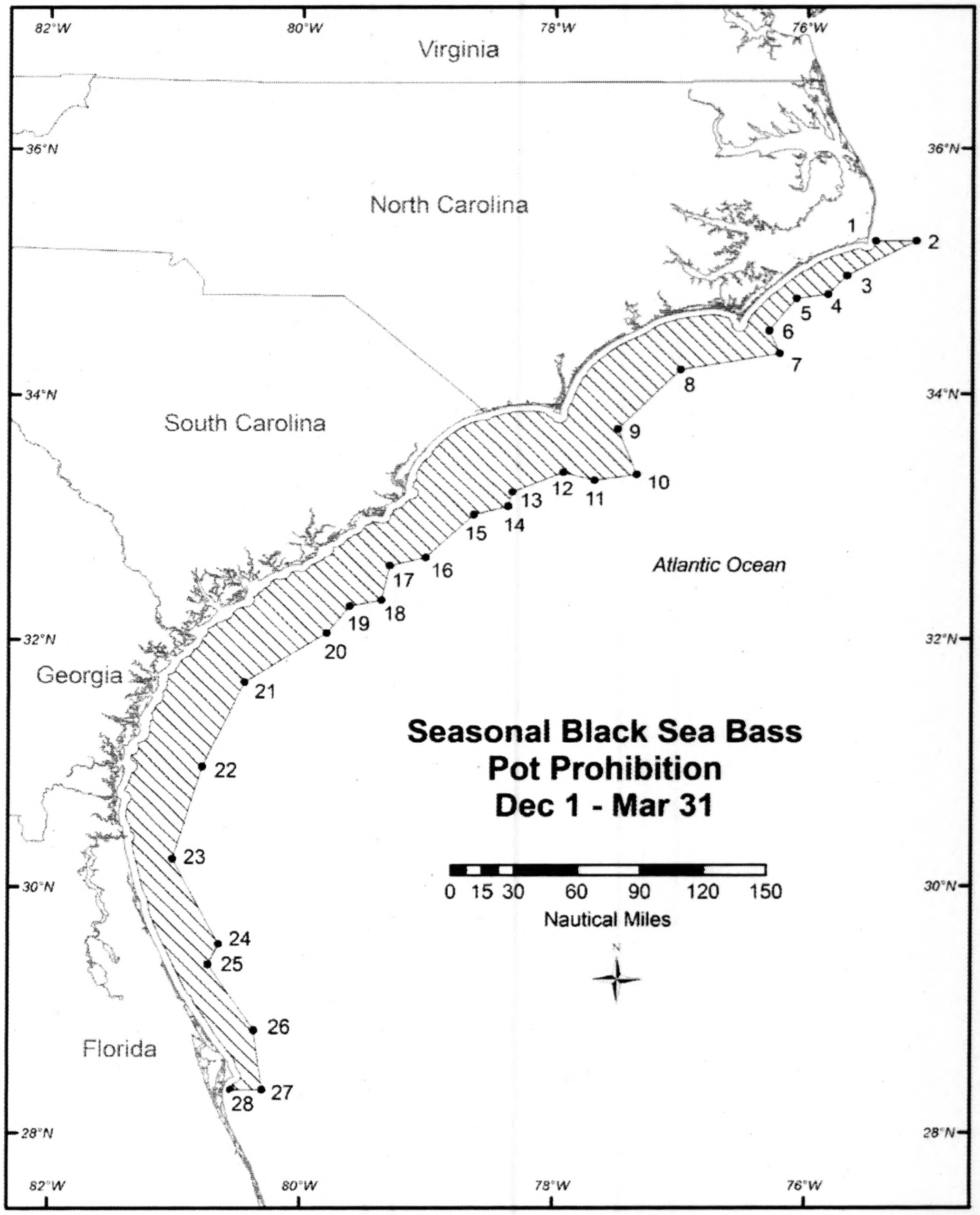
35
Seasonal Black Sea Bass
Pot Prohibition
Nov 1-30 and Apr 1-30
0 15 30 60 90 120 150
Nautical Miles

During the second closure period from December through March each year, the sea bass pot closure area would be larger off the entire South Atlantic coast than it would be during November and April, particularly off Georgia and Florida. Waters off the coast of Georgia and Florida represent the primary right whale calving grounds in the South Atlantic EEZ. This bathymetric area is based on right whale sightings (all demographic segments) and sightings per unit of effort (proxy of density) by depth and captures 97 percent and 96 percent of right whale sightings off the North Carolina/South Carolina area, and Florida/Georgia area, respectively. The proposed sea bass pot prohibited area for December through March is illustrated in Figure 2 below.

Figure 2. December Through March Black Sea Bass Pot Prohibition


82°W
80°W
78°W
76°W
36°N
34°N
32°N
30°N
28°N
Virginia
North Carolina
South Carolina
Georgia
Florida
Atlantic Ocean
1
2
3
4
5
6
7
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Seasonal Black Sea Bass
Pot Prohibition
Dec 1 - Mar 31
0 15 30 60 90 120 150
Nautical Miles
N

The Council has determined that reducing the size of the current black sea bass pot prohibition would continue to provide the necessary protection to ESA-listed whales in the South Atlantic. The Council based this conclusion on an analysis that simulated the potential black sea bass landings of black sea bass pot endorsement holders during a winter season and created overlays of the co-occurrence of the seasonal distribution of black sea bass pot gear and North Atlantic right whales as a proxy for the relative risk of right whale entanglements under each of the proposed alternatives in Regulatory Amendment 16. The findings of this analysis were recently published in the peer-reviewed journal, ''Marine and Coastal Fisheries'' by Farmer *et al.* (2016) which is available at the following Web site: *http://dx.doi.org/10.1080/19425120.2016.1146181.*

As described in Regulatory Amendment 16, the alternatives for all of the proposed black sea bass pot closures were developed considering the following spatial, temporal, and environmental variables. Spatial variation in the distribution of right whales is influenced by local environmental variables such as water temperature, depth, and distance to shore. The closed areas proposed in this rule incorporate these environmental variables and spatial distribution patterns to minimize the risk of interactions of marine mammals with black sea bass pot gear. During the months of November and April, the area proposed to be closed through this rule would prohibit black sea bass pots inshore of an area which represents 91 percent of historical right whale sightings off Florida and Georgia; and off North Carolina and South Carolina, the black sea bass pot prohibition would apply to Federal waters shallower than 25 m. During December through March, the area proposed to be closed through this rule would prohibit black sea bass pots shallower than 25 m off Florida and Georgia; and from the Georgia/South Carolina border to Cape Hatteras, North Carolina, the prohibition would apply to Federal waters that are shallower than 30 m in depth. This bathymetric area is based on right whale sightings by depth and captures 97 percent and 96 percent of right whale sightings off the North Carolina/South Carolina area, and Florida/Georgia area, respectively. NMFS is currently conducting an ESA section 7 consultation.

Additionally, the proposed closure areas listed in this rule are expected to minimize adverse socioeconomic effects of the current November through April black sea bass pot prohibition by increasing the area available to fish using black sea bass pots.

This proposed rule would also allow for vessel transit through the proposed black sea bass pot closed areas providing the black sea bass pot gear is appropriately stowed on the vessel. Transit would be defined as non-stop progression through the closed area; fishing gear appropriately stowed means all black sea bass pot gear must be out of the water and on board the deck of the vessel. All buoys must either be disconnected from the gear or stowed within the sea bass pot. The disconnected buoys may remain on deck.

Gear Marking Requirements

Fish traps and pot buoy lines, including black sea bass pots, are currently required to have specific line marking requirements during certain times of the year and in the locations described in the Atlantic Large Whale Take Reduction Plan (ALWTRP)(see 50 CFR 229.32(b)). The ALWTRP includes at least three trap/pot areas where black sea bass pots may be fished. This includes the Offshore Trap/Pot Waters Area, Southern Nearshore Trap/Pot Waters Area, and the U.S. Southeast Restricted Area North.

Regulatory Amendment 16 would modify the current gear marking requirements under the FMP by requiring additional markings for black sea bass pot buoy lines. This proposed rule would require that an additional 12-inch (30.5 cm) wide purple band be added onto the buoy line at the end of, and directly adjacent to, each of the currently required 12-inch (30.5 cm) colored marks required through the ALWTRP described in 50 CFR 229.32(b). Within the Council's jurisdiction for managing black sea bass, the proposed additional black sea bass gear marking requirements would be required to be in place in Federal waters from September 1 through May 31 in the Offshore Trap/Pot Waters Area and the Southern Nearshore Trap/Pot Waters Area, and from November 15 through May 31 in the Southeast U.S. Restricted Areas North. The Council's requirement that sea bass pot gear have additional gear-specific marking would help distinguish black sea bass pots from other types of trap and pot gear in the South Atlantic EEZ.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Regulatory Amendment 16, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the RFA, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or record-keeping requirements are introduced by this proposed rule. However, the proposed rule would require that for each sea bass pot buoy line an additional 12-inch (30.5 cm) wide purple band be added at the end of, and directly adjacent to, each of the currently required 12-inch (30.5 cm) colored marks required under the ALWTRP discussed above. Similar to the current requirements under the ALWTRP, this marking requirement does not need an additional expertise on the part of fishermen. NMFS estimates that this requirement would cost each pot endorsement holder about an additional $5 annually if surveyor's tape is used for line marking, or about an additional $90 annually if paint is used instead. The estimated additional annual time burden associated with the proposed marking requirement is up to approximately 3.5 hours annually.

NMFS expects this proposed rule to directly affect federally permitted commercial fishermen fishing for black sea bass in the South Atlantic. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

Pursuant to the RFA, and prior to July 1, 2016, an IRFA was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly affected by this regulatory action are commercial fishing businesses and were considered small under the SBA's size standards, and they all would continue to be considered small under the new NMFS standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

As of December 31, 2014, there were 32 holders of the Federal black sea bass pot endorsement to the snapper-grouper commercial permit. Since that time one endorsement holder has dropped out of the black sea bass pot component of the commercial sector, but the current analysis uses 32 endorsement holders because historical records of these 32 endorsement holders were used in Regulatory Amendment 16. Retaining the records of 32 endorsement holders is not expected to inflate the analytical results because only an average of 31 vessels fished for black sea bass using pots.

From the 2000/2001 through 2013/2014 fishing years, these endorsement holders used an average of 31 vessels fishing for black sea bass using pots. These vessels generated total combined revenues (2014 dollars) of $732,717 from black sea bass, $228,468 from other species jointly landed with black sea bass, and $248,662 from all other species in trips where black sea bass was not caught. The average annual revenue per vessel from all species, including black sea bass, landed by these vessels was $38,715 (2014 dollars). During the same time period, an average of 215 vessels using gear other than sea bass pots landed at least 1 lb (0.45 kg) of black sea bass. These vessels generated dockside total combined revenues (2014 dollars) of $199,574 from black sea bass, $3.838 million from other species jointly landed with black sea bass, and $7.680 million from all other species in trips where black sea bass was not caught. The average annual revenue per vessel from all species, including black sea bass, landed by these vessels was $54,651 (2014 dollars). Vessels that caught and landed black sea bass may also operate in other fisheries, the revenues of which are not known and are not reflected in these totals. Based on revenue information, all commercial vessels directly affected by the proposed rule may be assumed to be small entities.

Because all entities expected to be directly affected by this proposed rule are assumed to be small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities. However, the issue of disproportionate effects on small versus large entities does not arise in the present case.

The proposed rule would modify the November 1 through April 30 prohibition on the use of black sea bass pot gear in the South Atlantic by allowing black sea bass pot fishing at depths greater than approximately 25 m from November 1 through April 30 from approximately Cape Canaveral, Florida, to the Georgia/South Carolina border; at depths greater than approximately 25 m from November 1 through 30 and from April 1 through 30 off North and South Carolina; and, at depths greater than approximately 30 m from December 1 through March 31 off North and South Carolina. In addition, the proposed rule would require black sea bass pot endorsement holders to put three 12-inch (30.5 cm) purple markings on each sea bass pot buoy line adjacent to the already required colors on these lines under the ALWTRP. The marks are commonly made with either paint or surveyor's tape. As described in the codified text, other materials may also be used for marking the line.

The proposed modification to the current prohibition on the use of black sea bass pot gear would have contrasting economic effects on the two major groups of participants in the commercial harvest of black sea bass. The proposed action would benefit those using pots for harvesting black sea bass, and given that the commercial ACL is predicted to be fully taken, benefits to users of other gear would decrease. The combined dockside revenues (2014 dollars) for all pot gear vessels are estimated to increase annually between $113,964 and $185,068 based on 2000–2013 average black sea bass price, or between $163,606 and $260,355 based on 2011–2013 average black sea bass price. Two price levels are used to provide some bounds on the range of revenue effects. The lower bound is based on the 2000–2013 average black sea bass price and the upper bound is based on the 2011–2013 average black sea bass price. In contrast, the combined dockside revenues (2014 dollars) for all non-pot gear vessels are estimated to decrease annually between $68,323 and $141,527 based on 2000–2013 average black sea bass price, or between $116,650 and $241,631 based on 2011–2013 the average black sea bass price. The net revenue change for all vessels combined would be between $43,541 and $46,367 based on 2000–2013 average price for black sea bass, or between $43,889 and $46,553 based on 2010–2013 average price for black sea bass. Assuming that revenue increases for users of pot gear would be equally distributed among the 32 endorsement holders, revenues per pot endorsement holder would increase annually between $3,561 and $5,783, or between $5,113 and $8,136. However, revenue per vessel for the 215 users of non-pot gear would decrease between $318 and $658, or between $543 and $1,124. For vessels using pot gear, the expected revenue increases would be approximately 9 to 21 percent of their average annual revenue of $38,715 per vessel. However, revenue losses to vessels using gear other than sea bass pots would be between 1 and 2 percent of their average annual revenue of $54,651 per vessel. Therefore, on a per vessel basis, the revenue gains to the pot endorsement holders could potentially be substantial, whereas the revenue losses to the other gear users would be relatively small.

The proposed requirement on black sea bass pot endorsement holders to put three 12-inch (30.5 cm) purple markings on each pot buoy line adjacent to the already required colors under the ALWTRP would cost each endorsement holder about an additional $5 annually if surveyor's tape is used, or about an additional $90 annually if paint is used instead. This cost is relatively small.

The following discussion describes the alternatives that were not selected as preferred by the Council. In this section, the term "overall revenues" refers to the sum of revenues from vessels using black sea bass pots and revenues from vessels using gear other than black sea bass pots.

Twelve alternatives, including the preferred alternative as described above, were considered for modifying the November 1 through April 30 prohibition on the use of black sea bass pot gear. The first alternative, the no action alternative, would maintain the current economic benefits to all participants in the fishery as well as provide the least likelihood of right whales getting entangled with black sea bass pot lines. However, this alternative would not address the need to reduce the adverse socioeconomic effects of the current prohibition on the use of black sea bass pot gear.

The second alternative would apply the black sea bass pot closure to the area currently designated as North Atlantic right whale critical habitat from November 15 through April 15. This alternative would provide slightly more increases in overall revenues to commercial vessels than the preferred alternative, but it would also pose the highest threat of right whale entanglement with pot buoy lines.

The third alternative would apply the black sea bass pot closure from approximately Ponce Inlet, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Relative to the preferred alternative, this alternative would result in higher overall revenue increases but lower protection to right whales from getting entangled with pot buoy lines.

The fourth alternative would apply the black sea bass pot closure from approximately Cape Canaveral, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Although this alternative would provide increased protection to right whales from entanglement with pot buoy lines, it would result in smaller overall revenue increases than the preferred alternative.

The fifth alternative would apply the black sea bass pot closure from approximately Daytona Beach, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Relative to the preferred alternative, this alternative would provide slightly more increases in overall revenues to commercial vessels but would provide less protection to right whales from entanglement with pot buoy lines.

The sixth alternative would apply the black sea bass pot closure from approximately Sebastian Inlet, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Although this alternative would provide the second greatest protection in comparison with the alternatives in Regulatory Amendment 16 to right whales from entanglement with pot buoy lines, it would result in lower overall revenue increases than the preferred alternative.

The seventh alternative would apply the black sea bass pot closure from approximately the Altamaha River, Georgia, to Cape Hatteras, North Carolina, annually from November 1 through December 15 and March 15 through April 30; or annually from November 1 through December 15 and March 15 through April 30 for the area off North Carolina and South Carolina, and from November 15 through April 15 for the area off Georgia and Florida; or annually from February 15 through April 30 for the area off North Carolina and South Carolina, and from November 15 through April 15 for the area off Georgia and Florida. Relative to the preferred alternative, this alternative and its sub-alternatives would result in relatively higher overall revenue increases but would provide much reduced protection to right whales from entanglement with sea bass pot buoy lines.

The eighth alternative would apply the black sea bass pot closure from approximately Daytona Beach, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 15; or annually from November 1 through December 15 and February 15 through April 30 for the area off North Carolina and South Carolina, and from November 15 through April 15 for the area off Georgia and Florida. Relative to the preferred alternative, this alternative and its sub-alternatives would result in higher overall revenue increases but would afford a much reduced protection to right whales from entanglement with pot buoy lines.

The ninth alternative would apply the black sea bass pot closure from approximately Daytona Beach, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 15; or annually from November 1 through December 15 and February 15 through April 30 for the area off North Carolina and South Carolina, and from November 15 through April 15 for the area off Georgia and Florida. Relative to the preferred alternative, this alternative and its sub-alternatives would result in higher overall revenue increases but would provide much reduced protection to right whales from entanglement with pot buoy lines.

The tenth alternative would apply the black sea bass pot closure from approximately the Georgia/South Carolina border, to Cape Hatteras, North Carolina, annually from November 1 through December 15, with the following provision: From February 15 through April 30, the black sea bass pot closure applies to waters inshore of points 1–28 listed in Table 2.1.9 of Regulatory Amendment 16, approximately the Georgia/South Carolina border, to Cape Hatteras, North Carolina; from December 16 through February 14, there would be no closure off of the Carolinas; from November 15 through April 15, the black sea bass pot closure applies to waters inshore of points 20–28 listed in Table 2.1.8 of Regulatory Amendment 16, approximately the Georgia/South Carolina border, to approximately Daytona Beach, Florida. Relative to the preferred alternative, this alternative would result in higher overall revenue increases but would provide much reduced protection to right whales from entanglement with pot buoy lines.

The eleventh alternative would apply the black sea bass pot closure from approximately Cape Canaveral, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Relative to the preferred alternative, this alternative would result in higher overall revenue increases but would provide slightly reduced protection to right whales from entanglement with pot buoy lines.

Four alternatives, including the preferred alternative, were considered in addition to the existing ALWTRP buoy line/weak link gear requirements and buoy line rope marking for black sea bass pots in the South Atlantic. The first alternative, the no action alternative, would not impose any additional cost on fishermen when fishing for black sea bass using pots but it would not meet the need for the action. The second alternative, with two sub-alternatives, would impose requirements in addition to those required under the current ALWTRP for buoy lines from November 1 through April 30 in Federal waters in the South Atlantic. The first sub-alternative would require that the breaking strength for buoy lines not exceed 2,200 lb (997 kg) and the second sub-alternative would require that the breaking strength for buoy lines not exceed 1,200 lb (544 kg). The first sub-alternative is currently required under the ALWTRP in Federal waters off South Carolina, Georgia, and Florida, and would affect only about 17 pot endorsement holders in North Carolina. The estimated cost to each of these 17 fishermen is a maximum of $716. The second sub-alternative would impose the same cost per fisherman of $716 but would affect all 32 pot endorsement holders. The third alternative would require that the breaking strength of the weak links of the buoy lines must not exceed 400 lb (181 kg) for black sea bass pots in the South Atlantic EEZ. This alternative is a decrease from the current requirement of 600 lb (272 kg) breaking strength of the weak links under the ALWTRP, and is estimated to cost each of the 32 pot endorsement holders $65. Relative to the preferred alternative, all these alternatives, except the no action alternative, would impose higher costs upon fishermen using black sea bass pots.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). NMFS is proposing to revise the collection-of-information requirement under OMB Control Number 0648–0358. NMFS estimates the proposed requirement for sea bass pot gear marking would result in an additional annual cost of up to $90 per sea bass pot endorsement holder and require up to an additional 3.5 hours per response per year. Based upon feedback from fishermen, the cost and time burden for the proposed marking requirement may be slightly lower in subsequent years depending on the marking method used. However, NMFS estimates the requirement to endorsement holders would result in the same for cost and time burden for each subsequent year, because different materials used to mark sea bass pot gear are available and the longevity of the markings vary depending on factors such as the length of the fishing season and how often the gear is used. This estimate of the public reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. NMFS will submit this revision request to OMB for approval.

NMFS seeks public comment regarding:

- Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the gear marking will have practical utility;
- The accuracy of the burden estimate;
- The instructions for how to mark the sea bass pot gear; and
- Ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS or to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number. All currently approved collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 622

Annual catch limits, Black Sea Bass, Fisheries, Fishing, South Atlantic.

Dated: August 3, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.183, revise paragraph (b)(6) to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(6) *Seasonal closure of the commercial black sea bass pot component of the snapper-grouper fishery.* The closed area is that area and time period described in (b)(6)(i) and (b)(6)(ii) of this section, respectively. During the applicable closure, no person may harvest or possess black sea bass in or from the closed area within the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board, except that a vessel with a valid commercial permit for snapper-grouper with a sea bass pot endorsement that is in transit and with black sea bass pot gear appropriately stowed as described in paragraph (b)(6)(iii) of this section may possess black sea bass. In addition, sea bass pots must be removed from the water in the applicable closed area within the South Atlantic EEZ before the applicable time period, and may not be on board a vessel in the closed area within the South Atlantic EEZ during the applicable closure, except for such sea bass pot gear appropriately stowed on board a vessel in transit through the closed area. See paragraph (b)(6)(iii) of this section for black sea bass pot transit and gear stowage requirements through the closed areas.

(i) From November 1 through November 30 and from April 1 through April 30, no person may harvest or possess black sea bass in or from the closed area within the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board in the South Atlantic EEZ inshore of the rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
1	35°15′	State/EEZ boundary.
2	35°15′	75°09′
3	35°06′	75°22′
4	35°06′	75°39′
5	35°01′	75°47′
6	34°54′	75°46′
7	34°52′	76°04′
8	34°33′	76°22′
9	34°23′	76°18′
10	34°21′	76°27′
11	34°25′	76°51′
12	34°09′	77°19′
13	33°44′	77°38′
14	33°25′	77°27′
15	33°22′	77°40′
16	33°28′	77°41′
17	33°32′	77°53′
18	33°22′	78°26′
19	33°06′	78°31′
20	33°05′	78°40′
21	33°01′	78°43′
22	32°56′	78°57′
23	32°44′	79°04′
24	32°42′	79°13′
25	32°34′	79°23′
26	32°25′	79°25′
27	32°23′	79°37′
28	31°53′	80°09′
29	31°31′	80°33′
30	30°43′	80°49′
31	30°30′	81°01′
32	29°45′	81°01′
33	29°31′	80°58′
34	29°13′	80°52′
35	29°13′	State/EEZ boundary.

(ii) From December 1 through March 31, no person may harvest or possess black sea bass in or from the closed area within the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board in the South Atlantic EEZ inshore of the rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
1	35°15′	State/EEZ boundary/
2	35°15′	75°08′
3	34°58′	75°41′
4	34°49′	75°50′
5	34°47′	76°05′
6	34°31′	76°18′
7	34°20′	76°13′
8	34°12′	77°00′
9	33°43′	77°30′
10	33°21′	77°21′
11	33°18′	77°41′
12	33°22′	77°56′
13	33°12′	78°20′
14	33°05′	78°22′
15	33°01′	78°38′
16	32°40′	79°01′
17	32°36′	79°18′
18	32°19′	79°22′
19	32°16′	79°37′
20	32°03′	79°48′
21	31°39′	80°27′
22	30°58′	80°47′
23	30°13′	81°01′
24	29°32′	80°39′
25	29°22′	80°44′
26	28°50′	80°22′
27	28°21′	80°18′
28	28°21′	State/EEZ boundary.

(iii) For the purpose of paragraph (b)(6) of this section, transit means non-stop progression through the area; fishing gear appropriately stowed means all black sea bass pot gear must be out of the water and on board the deck of the vessel. All buoys must either be disconnected from the gear or stowed within the sea bass pot. Disconnected buoys may remain on deck.

* * * * *

■ 3. In § 622.189, add paragraph (g) to read as follows:

§ 622.189 Restrictions and requirements for sea bass pots.

* * * * *

(g) *Sea bass pot buoy line marking requirement.* In addition to the gear marking requirements specified in 50 CFR 229.32(b), from November 15 through April 15, each year, in the

Southeast U.S. Restricted Area North as described in 50 CFR 229.32(f) and from September 1 through May 31, each year in the Offshore Trap/Pot Waters Area and the Southern Nearshore Trap/Pot Waters Area, as described in 50 CFR 229.32(c)(6) and (9), respectively, the buoy line must be marked with a purple color band. The colored band must be clearly visible when the gear is hauled or removed from the water, including if the color of the rope is the same as, or similar, to the colored band. The purple band must be marked directly onto the line and adjacent to the buoy line markings specified in 50 CFR 229.32(b), that is, at the top, middle, and bottom of each buoy line deployed by, or on board, the vessel. Each of the three purple bands must be a 12-inch (30.5 cm) color mark. In marking or affixing the purple band, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material.

[FR Doc. 2016–18998 Filed 8–10–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 155
Thursday, August 11, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Submission for OMB Review; Comment Request

August 8, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 12, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Erroneous Payments in Child Care Centers Study (EPICCS).

OMB Control Number: 0584–NEW.

Summary of Collection: The Child and Adult Care Food Program (CACFP), administered by the Food and Nutrition Service (FNS), is authorized at Section 17 of the National School Lunch Act (42 U.S.C. 1766). The CACFP supports day care centers through reimbursements of costs for serving nutritious meals and snacks to eligible children and adults. The Improper Payments Information Act (IPIA) of 2002 (Pub. L. 107–300) set annual requirements for Federal programs, such as CACFP, to report estimates of improper payments in an effort to improve program integrity. Further guidance was provided in a 2009 Executive Order and by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Pub. L. 111–204) and the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (Pub. L. 112–248), which amended and expanded IPIA requirements. In order to comply with reporting requirements concerning improper payments, FNS is conducting the Erroneous Payments in Child Care Centers Study (EPICCS). This study will focus on CACFP operations in participating child care centers and their sponsoring organizations. This study is necessary for FNS's annual compliance with IPERA in the child care center component of CACFP.

Need and Use of the Information: The data collected from EPICCS will be used to produce national estimates of improper or erroneous payments in the child care center component of the CACFP resulting from certification, aggregation, and meal claiming errors; to develop models for calculating annual, national estimates for all three types of errors; and to describe methodologies for generating State-level erroneous payment estimates in a White Paper. FNS will also use the data to fulfill reporting requirements under IPERA to annually measure and report erroneous payments in the CACFP, to identify the sources of erroneous payments, and to inform its policy-making and regulatory processes for maintenance and improvements in program integrity.

Description of Respondents: Individuals or households, Businesses or other for-profits, Not-for profit institutions, and State, Local, or Tribal Government.

Number of Respondents: 8,942.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 13,906.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. 2016–19088 Filed 8–10–16; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Virginia Advisory Committee to Plan Civil Rights Project

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that planning meetings of the Virginia Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (ET) on each of the following Thursdays: September 8, October 6, November 3 and December 1, 2016. The purpose of each planning meeting is to discuss project planning and eventually select topic(s) for the Committee's civil rights review.

DATES: The meetings will be held at 12:00 p.m. EST on Thursday, September 8, 2016; Thursday, October 6, 2016; Thursday, November 3, 2016; and Thursday, December 1, 2016.

ADDRESSES: Public Call Information: Dial 1–888–539–3613; Conference ID 5914757.

Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–539–3613 and conference call ID: 5914757. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–888–539–3613 and conference call ID: 5914757.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=279;* click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Public Call-In Information: Conference call-in number: 1–888–539–3613 and conference call ID: 5914757.

TDD: Dial Federal Relay Service at 1–800–977–8339 and give the operator the above toll-free conference call-in number and conference call ID.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533

SUPPLEMENTARY INFORMATION:

Agenda

I. Welcome and Introductions
—Rollcall
Planning Meeting
—Discuss Project Planning
II. Other Business
III. Open Comment
IV. Adjournment

Dated: August 5, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–19056 Filed 8–10–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluorethylene Resin From Italy: Final Results of Sunset Review and Revocation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 1, 2016, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on granular polytetrafluorethylene (PTFE) resin from Italy. Because the domestic interested parties did not participate in this sunset review, the Department is revoking this antidumping duty order.

DATES: Effective [July 18, 2016].

FOR FURTHER INFORMATION CONTACT: Toby Vandall, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1664.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1988, the Department issued the antidumping duty order on granular PTFE resin from Italy.[1] On July 18, 2011, at the conclusion of the most recently completed sunset review, the Department published a notice of continuation of the antidumping duty order on PTFE resin from Italy.[2] On June 1, 2016, the Department initiated the current sunset review of this order.[3] We did not receive a notice of intent to participate from domestic interested parties for this sunset review by the applicable deadline. As a result, in accordance with 19 CFR 351.218(d)(1)(iii)(A), the Department determined that no domestic interested party intends to participate in this sunset review, and on June 20, 2016, we notified the International Trade Commission, in writing, that we intended to issue a final determination revoking this antidumping duty order.[4]

Scope of the Order

The product covered by the order is PTFE resin, filled or unfilled. The order also covers PTFE wet raw polymer exported from Italy to the United States. *See Granular Polytetrafluoroethylene Resin From Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order,* 58 FR 26100 (April 30, 1993). The order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTSUS). We are providing this HTSUS number for convenience and customs purposes only. The written description of the scope remains dispositive.

Revocation

Pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because no domestic interested party filed a notice of intent to participate, the Department finds that no domestic interested party is participating in this sunset review. Therefore, we are revoking the antidumping duty order on PTFE from Italy.

Effective Date of Revocation

Pursuant to 19 CFR 351.222(i)(2)(i), the effective date of revocation is July 18, 2016, the fifth anniversary of the effective date of publication in the **Federal Register** of the previous continuation of this order.[5] Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to issue instructions to U.S. Customs and Border Protection, 15 days after publication of this notice, to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, for consumption on or after July 18, 2016. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty cash deposit requirements.

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[1] *See Antidumping Duty Order: Granular Polytetrafluoroethylene Resin from Italy,* 53 FR 33163 (August 30, 1988).

[2] *See Granular Polytetrafluoroethylene Resin From Italy: Continuation of Antidumping Duty Order,* 76 FR 42114 (July 18, 2011) (*Continuation*).

[3] *See Initiation of Five-Year ("Sunset") Review,* 81 FR 34974 (June 1, 2016).

[4] *See* 19 CFR 351.218(d)(l)(iii)(B)(2). *See* also letter from the Department, "Sunset Reviews Initiated on June 1, 2016" (June 20, 2016).

[5] *See Continuation.*

The final results of this five-year (sunset) review and notice is published in accordance with sections 751(c) and 777(i)(l) of the Act.

Dated: August 5, 2016.

Ronald K. Lorentzen

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–19155 Filed 8–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce ("the Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty ("AD") order on Porcelain-on-Steel Cooking Ware ("POS Cooking Ware") from the People's Republic of China ("PRC") would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: Effective August 11, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Devine, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0238.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2016, the Department published the notice of the initiation of the fourth five-year ("sunset") review of the Antidumping Order ("AD Order") on POS Cooking Ware from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1] As a result of its review, the Department determined that revocation of the AD Order would likely lead to a continuation or recurrence of dumping.[2] The Department, therefore, notified the ITC of the magnitude of the margins likely to prevail should the AD Order be revoked.

On July 28, 2016, the ITC published notice of its determination, pursuant to section 751(c) of the Act, that revocation of the AD Order on POS Cooking Ware from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Orders

The merchandise covered by the AD Order is porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States, ("HTSUS") subheading 7323.94.00.[4] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the AD Order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD Order on POS Cooking Ware from the PRC. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the Order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the Order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: August 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–19143 Filed 8–10–16; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Initiation of Five-Year ("Sunset") Review,* 80 FR 45945 (August 3, 2015).

[2] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order,* 81 FR 36870 (June 8, 2016).

[3] *See Porcelain-on-Steel Cooking Ware from China: Investigation No. 731–TA–298 (Fourth Review),* USITC Publication 4625 (July, 2016); *see also Porcelain-on-Steel Cooking Ware from China; Determination,* 81 FR 49688 (July 28, 2016).

[4] *See Porcelain-on-Steel Cooking Ware from the People's Republic of China,* 76 FR 7534 (February 10, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Correction to the Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or William Horn, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–2615, respectively.

SUPPLEMENTARY INFORMATION: On July 19, 2016, the Department of Commerce ("the Department") published the final results of the 2013–2014 administrative review of the antidumping duty order on multilayered wood flooring from the People's Republic of China ("PRC").[1] The period of review ("POR") is December 1, 2013, through November 30, 2014. The Department is issuing this notice to correct an inadvertent error in the *Final Results.* Specifically, the Department inadvertently omitted identifying several companies that are part of the PRC-wide entity. The Department finds that 16 companies subject to this review did not establish eligibility for a separate rate. As such, we determine they are part of the PRC-wide entity. The following companies were named in the *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 6041 (February 4, 2014), but did not submit a certification of no shipment, separate rate application, or separate rate certification; therefore they are part of the PRC-wide entity: Anhui Suzhou Dongda Wood Co., Ltd.; Baiying Furniture Manufacturer Co., Ltd.; Cheng Hang Wood Co., Ltd.; Dalian Jiuyuan Wood Industry Co., Ltd.; Fu Lik Timber

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[1] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 46899 (July 19, 2016) ("*Final Results*").

(HK) Co., Ltd.; Guangzhou Homebon Timber Manufacturing Co., Ltd.; HaiLin XinCheng Wooden Products, Ltd.; Hangzhou Dazhuang Floor Co., Ltd (dba Dasso Industrial Group Co., Ltd); Linyi Anying Wood Co., Ltd.; Qingdao Barry Flooring Co., Ltd. ; Shanghai Anxin (Weiguang) Timber Co., Ltd.; Vicwood Industry (Suzhou) Co., Ltd.; Zhejiang AnJi XinFeng Bamboo & Wood Industry Co., Ltd.; Zhejiang Desheng Wood Industry Co., Ltd.; Zhejiang Haoyun Wooden Co., Ltd.; and Zhejiang Shiyou Timber Co., Ltd. Because no party requested a review of the PRC-wide entity and the Department no longer considers the PRC-wide entity as an exporter conditionally subject to administrative reviews,[2] we did not conduct a review of the PRC-wide entity. Thus, the rate for the PRC-wide entity is not subject to change as a result of this review.

This correction to the final results of administrative review is issued and published in accordance with sections 751(h) and 777(i)(2)(i) of the Tariff Act of 1930, as amended.

Dated: August 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–19133 Filed 8–10–16; 8:45 am]

BILLING CODE 3510–DS–P

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[2] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969–70 (November 4, 2013).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (“the Department”) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: Effective August 11, 2016.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (“POR”), it must notify the Department within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (“the Act”). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the period of review. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments five days after the deadline for the initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be “collapsed” (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (“Q&V”) Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

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[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2017.

	Period to be reviewed
Antidumping Duty Proceedings	
MEXICO: Prestressed Concrete Steel Rail Tie Wire, A–201–843	6/1/15–5/31/16
Aceros Camaesa, S.A. de C.V	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions,[4] A–570–967	5/1/15–4/30/16
The PRC-Wide Entity	
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates, A–570–898	6/1/15–5/31/16
Hebei Jiheng Chemical Co. Ltd	
Heze Huayi Chemical Co. Ltd	
Juancheng Kangtai Chemical Co. Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: High Pressure Steel Cylinders, A–570–977	6/1/15–5/31/16
Beijing Tianhai Industry Co., Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Polyester Staple Fiber, A–570–905	6/1/15–5/31/16
Cixi Sansheng Chemical Fiber Co	
Hangzhou Huachuang Co., Ltd. also known as Huachuang Industrial Co., Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings, A–570–601	6/1/15–5/31/16
Changshan Peer Bearing Co., Ltd	

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[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
GGB Bearing Technology (Suzhou) Co., Ltd	
GSP Automotive Group Wenzhou Co. Ltd	
Hangzhou Yonggu Auto-Parts Co., Ltd	
Yantai CMC Bearing Co. Ltd./CMC Bearings Co. Ltd	
Zhejiang CTL Auto Parts Manufacturing Incorporated Co., Ltd	
Zhejiang Zhaofeng Mechanical & Electronic Co., Ltd	
Zhejiang Zhengda Bearing Co., Ltd	
TURKEY: Welded Carbon Steel Standard Pipe and Tube,[5] A–489–501	5/1/15–4/30/16
Borusan Ihracat Ithalat ve Dagitim A.S	
Cayirova Boru Sanayi ve Ticaret A.S	
Countervailing Duty Proceedings	
THE PEOPLE'S REPUBLIC OF CHINA: High Pressure Steel Cylinders, C–570–978	1/1/15–12/31/15
Beijing Tianhai Industry Co., Ltd	

Suspension Agreements

None.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013–08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[6] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[7] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation

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[4] The entity listed above was inadvertently excluded from the initiation notice that published on July 7, 2016 (81 FR 44260).

[5] The two company names listed were misspelled in the initiation notice that published on July 7, 2016 (81 FR 44260). The correct spellings are listed in this notice.

[6] *See* section 782(b) of the Act.

[7] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) ("*Final Rule*"); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 5, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–19152 Filed 8–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Council Cooperative Reports.

OMB Control Number: 0648–0678.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 26.

Average Hours per Response: Crab Rationalization Cooperative Annual Report, 30 hours; Rockfish Cooperative Annual Report, 45 hours; Amendment 80 Annual Cooperative Report, Amendment 80 Halibut Bycatch Avoidance Progress Report, American Fisheries Act (AFA) Catcher Vessel Intercooperative Agreement and AFA Annual Catcher Vessel Intercooperative Report, 40 hours each; Amendment 80 Halibut Prohibited Species Catch Management Plan; 12 hours.

Burden Hours: 1,129.

Needs and Uses: This request is for revision and extension of an existing information collection.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act) authorizes the North Pacific Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. NOAA's National Marine Fisheries Service (NMFS) manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area. The fishery management plans (FMPs) were approved by the Secretary of Commerce under authority of the Magnuson-Stevens Act as amended in 2006. The groundfish FMPs are implemented by regulations at 50 CFR part 679. The Crab FMP is implemented by regulations at 50 CFR part 680.

In the last decade or more, the Council has developed several cooperative programs as options in larger catch share programs. As part of those cooperative programs, the Council required that cooperatives submit an annual written report detailing various activities of the cooperative. These reports are intended to be a resource for the Council to track the effectiveness of the cooperative and their ability to meet the Council's goals. Additionally, they are a tool for the cooperatives to provide feedback on the programs. Regulation provides a framework for the minimum required information for most of the reports, while the Council has the flexibility to augment this framework with additional information requests that may be pertinent to current issues in the fishery.

This request combines voluntary, non-regulatory cooperative report elements from four collections (OMB Control Nos. 0648–0401, –0565, –0678, and –0697) with the Annual Rockfish Cooperative Report from OMB Control Number 0648–0545 which contains both required (per 50 CFR 679.5(r)) and voluntary data elements. The title of this collection is changed from "Crab Rationalization (CR) Program: CR Cooperative Annual Report" to read: "Alaska Council Cooperative Annual Reports." In addition to presentation of the report before the Council, all of the annual reports must be submitted to the Council by email or fax for the April Council meeting.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary and required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 8, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–19083 Filed 8–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Fostering the Advancement of the Internet of Things Workshop

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene a workshop on behalf of the U.S. Department of Commerce's Internet Policy Task Force and the Digital Economy Leadership Team on Fostering the Advancement of the Internet of Things.

DATES: The workshop will be held on September 1, 2016, from 9:00 a.m. to 3:00 p.m., Eastern Daylight Time.

ADDRESSES: The workshop will be held at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia 22314. The location of the meeting is subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/category/internet-things*, for the most current information.

FOR FURTHER INFORMATION CONTACT: Travis Hall, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone (202) 482–3522; email *thall@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: Recognizing the vital importance of the Internet to U.S. innovation, prosperity, education, and civic and cultural life, the Department of Commerce has made it a top priority to encourage growth of the digital economy and ensure that the Internet remains an open platform for innovation and free expression. As part of the Department's Digital Economy Agenda, the National Telecommunications and Information Administration (NTIA) initiated an inquiry regarding the Internet of Things (IoT) to review the current technological and policy landscape, which included a Request for Comment on "The Benefits, Challenges, and Potential Roles for the Government in Fostering the Advancement of the Internet of Things."[1] This workshop will build on the comments received in the Request for Comment, focusing specifically on the potential benefits and challenges of these technologies and what role, if any, the U.S. Government should play in this area. This workshop will help to inform the Department's forthcoming issue-spotting, agenda-setting green paper on IoT.

NTIA will post a detailed agenda on its Web site, *www.ntia.doc.gov/category/internet-things*, prior to the meeting. The workshop will consist of a number of panels and speakers that will explore in more depth the obstacles and opportunities raised by commenters on the federal government's role in IoT deployment. Agenda topics and format are subject to change.

The meeting is open to the public and the press. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Travis Hall at (202) 482–3522 or *thall@ntia.doc.gov* at least seven (7) business days prior to the meeting. The meeting will also be webcast. Requests for real-time captioning of the webcast or other auxiliary aids should be directed to Travis Hall at (202) 482–3522 or *thall@ntia.doc.gov* at least seven (7) business days prior to the meeting. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/category/internet-things*, for the most current information.

Dated: August 5, 2016.

Angela M. Simpson,

Deputy Assistant Secretary, National Telecommunications and Information Administration.

[FR Doc. 2016–19048 Filed 8–10–16; 8:45 am]

BILLING CODE 3510–60–P

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[1] Request for Comments on the Benefits, Challenges, and Potential Roles for Government in Fostering the Advancement of the Internet of Things (Apr. 5, 2016) available at *https://www.ntia.doc.gov/federal-register-notice/2016/rfc-potential-roles-government-fostering-advancement-internet-of-things.*

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before September 12, 2016.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly *to the Office of Information and Regulatory Affairs (OIRA) in OMB, within 30 days* of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–NEW. Please provide the Commodity Futures Trading Commission ("CFTC" or "Commission") with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–NEW, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to: Nisha Smalls, Office of Customer Education and Outreach, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581; or through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or sent by hand delivery/courier to the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *reginfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Nisha Smalls, Office of Customer Education and Outreach, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418–5895; FAX: (202) 418–5541; email: *nsmalls@cftc.gov* and refer to this **Federal Register** notice. A copy may also be obtained from this contact.

SUPPLEMENTARY INFORMATION: The Commission's Office of Customer Education and Outreach (OCEO) develops campaigns to change customer behaviors, so that customers can better avoid fraud as defined under the Commodity Exchange Act. The OCEO intends to survey the public by identifying customers and determining if the CFTC's SmartCheck℠ campaign is helping them to identify, avoid, and report financial fraud.

Title: CFTC SmartCheck Annual Campaign Impact Tracking Survey, (OMB Control No. 3038–NEW). This is a request for approval of a new collection.

Abstract: In 2010, the Dodd-Frank Act [1] expanded the Commission's authority to, among other matters related to regulatory oversight, establish funding of consumer education initiatives under its new Whistleblower authority.[2] Under this new authority, the Commission established the OCEO to, among other efforts, survey the public regarding consumer education initiatives.[3] This notice announces a public survey. This survey will include screening questions to identify the correct respondents and questions to determine if the CFTC's SmartCheck℠ campaign is helping customers identify, avoid, and report financial fraud.

The OCEO will use the information collected in the survey to refine the methods used to inform the public about how to best detect and report financial fraud. This will be done by creating a final summary report that includes key findings from the survey.

Findings from the summary report will be used to directionally inform the outreach efforts that the CFTC undertakes concerning helping customers avoid financial fraud.

The survey will be administered using an online survey tool. The online modality approach will allow presentation of test material to participants in a more convenient and time-efficient manner than other collection methods such as mall intercepts. The online method also allows for a quicker turnaround for data collection. No other collection methods will be used.

Burden Statement: The screening questions will take about 1 minute to complete. It is anticipated that 4,000 people will be screened. The survey will take about 15 minutes. The cost of the screener survey will be approximately $3,125, which equates to $46.85 per burden hour. 2,000 people will take the 15 minute survey. The cost of the full survey will be approximately $46,875, which equates to $93.75 per burden hour. Based on these assumptions, the total burden hours will be 566.7 hours. The Commission estimates the average burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN HOURS

	Annual reporting	Frequency of reporting	Hours per report	Total	
17 CFR 165.12	4,000	1 response per respondent.	1 minute per response	4,000	66.7 hours total burden.
17 CFR 165.12	2,000	1 response per respondent.	15 minutes per response	2,000	500 hours total burden.

The proposed survey questions appear below:

CFTC SmartCheck Annual Campaign Impact Tracking Survey

CFTC TARGET = Age 50–65; HH income 60k+; Answers 1 or 2 for question 1; Invests in 2 or more products in question 2

Screener

1. When it comes to family and personal investments like stocks, mutual funds, or other trading products, how likely are you to be involved in making decisions for your household?

1	Very likely.
2	Somewhat likely.
3	Not too likely.
4	Not at all likely.

2. Below is a list of financial products. Please select all that you currently are invested in or have invested in.

1	Stocks or shares.
2	Precious metals like gold or silver.
3	Foreign currency trading (FOREX).
4	Any type of futures or options.
5	None of these [Single Punch (SP)].
6	Don't know [SP].

Survey

[Grid, SP Across]

Please answer yes or no to each of the following questions.

Yes	No
1	2

3. .... Have you read, seen, or heard anything about the Commodity Futures Trading Commission (CFTC)?

4. .... Have you read, seen, or heard anything about CFTC SmartCheck, a campaign that promotes expert tools and resources to check the background of financial professionals, learn how to avoid investment fraud, and report suspicious activity?

5. .... Have you read, seen, or heard anything about SmartCheck.gov, a website that links to databases which allow investors to check the background of financial professionals?

6. .... Have you read, seen, or heard anything about Investor.gov, a website that allows you to check the background of investment adviser representatives and firms?

7. .... Have you read, seen, or heard anything about BrokerCheck.org, a website that allows you to check the background of brokers who sell stocks, bonds, mutual funds and other securities?

[Grid, SP Across. Randomize Grid Rows]

Below are a number of actions that you may or may not be likely to complete. Please indicate how likely or unlikely you are to complete the actions using the scale below. If you were considering investing with someone you had not invested with before, how likely are you to:

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[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

[2] *See* 7 U.S.C. 26.

[3] *See* 17 CFR 165.12.

Very likely	Somewhat likely	Not likely or unlikely	Not too likely	Not at all Likely
1	2	3	4	5

8.	Review performance history.
9.	Talk to references and/or past clients.
10.	Confirm certifications and/or education.
11.	Perform a general Internet search.
12.	Check disciplinary history with an official financial regulator.
13.	Check licensing and/or registration status with an official financial regulator.
14.	Personally interview.
15.	Check job affiliations with an official financial regulator.
16.	None of these/don't know [SP].

[SP]

17. Generally speaking, how concerned are you about unknowingly being part of a fraudulent investment?

1	Very concerned.
2	Somewhat concerned.
3	Not too concerned.
4	Not at all concerned.

[SP]

18. If you *suspected* an investment *you were aware of* was fraudulent, how likely would you be to report it to a government financial agency such as the U.S. Commodity Futures Trading Commission (CFTC) or the U.S. Securities and Exchange Commission (SEC)?

1	Very likely.
2	Somewhat likely.
3	Not too likely.
4	Not at all likely.

[SP]

19. If you became aware that an investment you were *already a part of* was fraudulent, how likely would you be to report it to a government financial agency such as the U.S. Commodity Futures Trading Commission (CFTC) or the U.S. Securities and Exchange Commission (SEC)?

1	Very likely.
2	Somewhat likely.
3	Not too likely.
4	Not at all likely.

[MP; Randomize Leaving Last 1 at the End]

20. Which, if any, of the following do you think are potential signs of investment fraud? If the person selling the investment . . .

1	said the investment has a guaranteed rate of return.
2	said s/he has a special credential, so they can be trusted.
3	said that many of your friends have already invested in the opportunity.
4	was willing to charge you half of the regular commission.
5	said the opportunity was closing soon, so it was important to act quickly.
6	None of these [SP].

[Grid, SP Across. Randomize Grid Rows]

Below are a number of statements with which you may or may not agree. Please indicate how much you agree or disagree with each statement.

Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree
1	2	3	4	5

21.	It is important to know the common signs of fraud when investing.
22.	The government reviews and investigates all alleged reports of investment fraud.
23.	I know where to go to report suspected or known incidents of investment fraud.
24.	I know where to go to check the background of a financial professional.
25.	*Before I invest,* it is important to check the registration and/or licensing status of a financial professional.
26.	*Each year,* it is important to check the registration and/or licensing of a financial professional with whom I invest.
27.	*Before I invest,* it is important to check the disciplinary history of a financial professional.
28.	*Each year,* it is important to check the disciplinary history of a financial professional.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 8, 2016.

Christopher J. Kirkpatrick,
Secretary of the Commission.

[FR Doc. 2016–19127 Filed 8–10–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2016–HQ–0009]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Exchange Employee Management and Pay System; Exchange Form 1400–011 "Annuity Application", Exchange From 1450–018 "Application for Payment of Survivor Annuity", Exchange Form 1700–012 "Beneficiary Designation", Exchange Form 6650–007 "Patient Health Questionnaire", Web-based "Health/Benefit Enrollment"; OMB Control Number: 0702–XXXX.

Type of Request: In existence without OMB Control Number.

Number of Respondents: 7650.

Responses per Respondent: 1.

Annual Responses: 7650.

Average Burden per Response: 115 minutes.

Annual Burden Hours: 2533 hours.

Needs and Uses: The information collection requirement is necessary to administer a number of different benefits and pay available to eligible Exchange associates, former associates (retirees), their personal dependents, beneficiaries, spouses, and ex-spouses. This includes collecting data needed to provide and administer pay, salary and retirement funds/entitlements.

Affected Public: Individuals or households and Federal Government.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: August 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–19062 Filed 8–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2014–0033]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Exchange Accident/Incident Reports; Exchange Form 3900–017, "Statements", OMB Control Number: 0702–XXXX.

Type of Request: In existence without OMB Control Number.

Number of Respondents: 4854.

Responses per Respondent: 1.

Annual Responses: 4854.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 4854 hours.

Needs and Uses: The information collection requirement is necessary to record incidents such as accidents, mishaps, fires, thefts or any issue involving government property. This collection insures the Exchange has the necessary information regarding injuries and illnesses in order to administer and follow-up on medical treatment and payment of claims. Collection assists the Exchange in recouping damages, correcting deficiencies, initiating appropriate disciplinary action(s), filing insurance and workers' compensation required documents.

Affected Public: Individuals or Households and Federal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: August 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–19063 Filed 8–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The Army Education Advisory Committee will meet from 9:00 a.m. to 5:00 p.m. on September 7 & 8, 2016.

ADDRESSES: Army Education Advisory Committee, 950 Jefferson Avenue, Building 950, U.S. Training and Doctrine Command (TRADOC) Headquarters, Conference Room 3075, Ft. Eustis, VA 23604.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Joyner, the Designated Federal Officer for the committee, in writing at ATTN: ATTG–ZC, TRADOC, 950 Jefferson Ave., Fort Eustis, VA 23604, by email at *albert.w.joyner.civ@mail.mil,* or by telephone at (757) 501–5810.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to collect and analyze data dealing with how to blend the best characteristics of civilian and military educational institutions to create a premier learning environment, how the Army manages and assesses talent, and will finalize provisional subcommittee findings and recommendations.

Proposed Agenda: September 7–8: The committee is chartered to provide independent advice and recommendations to the Secretary of the Army on the educational, doctrinal, and research policies and activities of U.S. Army educational programs. The committee will review and evaluate information related to Army University and Talent Management, and discuss and deliberate provisional findings and recommendations submitted by its subcommittees.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Joyner, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Because the meeting of the committee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. TRADOC Headquarters is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Mr. Joyner, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mr. Joyner, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Designated Federal Official will review all submitted written comments or statements and provide them to members of the committee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. Written comments or statements received after this date may not be provided to the committee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least seven business days in advance to the committee's Designated Federal Official, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Official will log each request, in the order received, and in consultation with the committee Chair, determine whether the subject matter of each comment is relevant to the committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three minutes during the period, and will be invited to speak in the order in which their requests were received by Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–18975 Filed 8–10–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Board of Visitors, National Defense University ("the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The Board's charter and contact information for the Board's Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/*.

The Board focuses on the overall management and governance of the National Defense University (NDU) in achieving its mission to support the joint warfighter. The Board provides the Secretary of Defense and the Deputy Secretary of Defense, through the Chairman of the Joint Chiefs of Staff and the President of the National Defense University, independent advice and recommendations on accreditation compliance, organizational management, strategic planning, resource management, and other matters of interest to the NDU in its mission to support the joint warfighter through rigorous Joint Professional Military Education. The Board is composed of no more than 12 members who are eminent authorities in the fields of defense, management, leadership, academia, national military strategy or joint planning at all levels of war, joint doctrine, joint command and control, or joint requirements and development. All members are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, Board members serve without compensation.

The DoD may establish subcommittees, task forces, or working groups to support the Board. All subcommittees operate under the provisions of FACA and the Government in the Sunshine Act, will not work independently of the Board, report all findings to the Board for full deliberation and discussion, and have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees.

The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board or subcommittee meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Board meetings. All written statements must be submitted to the Board's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: August 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–19061 Filed 8–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0091]

Agency Information Collection Activities; Comment Request; Federal Perkins Loan Program Regulations and General Provisions Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 11, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0091. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins Loan Program Regulations and General Provisions Regulations.

OMB Control Number: 1845–0019.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 11,616,710.

Total Estimated Number of Annual Burden Hours: 6,247,152.

Abstract: This request is for continued approval of the reporting and recordkeeping requirements that are contained in the General Provisions regulations as well as the specific program regulations for the Federal Perkins Loan program, the Federal Work-Study program, and the Federal Supplemental Educational Opportunities Grant program. This purpose of this submission is to renew this collection for the next three year period. The information collection requirements are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Dated: August 8, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–19166 Filed 8–10–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–100–000]

West Deptford Energy, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On August 1, 2016, the Commission issued an order in Docket No. EL16–100–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of West Deptford Energy, LLC's reactive power rates. *West Deptford Energy, LLC,* 156 FERC ¶ 61,084 (2016).

The refund effective date in Docket No. EL16–100–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19078 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the wholesale markets of ISO New England Inc. (ISO–NE):

Markets and Public Policy: Solution Ideas Day, August 11, 2016, 10:00 a.m.–5:00 p.m. (EST)

The above-referenced meetings will be held at: Colonnade Hotel, 120 Huntington Ave., Boston, MA 02116.

Further information may be found at *www.nepool.com.*

The discussion at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. EL13–33 and EL 14–86, *Environment Northeast et al.* v. *Bangor Hydro-Electric Company et al.*

Docket No. EL16–19, *ISO New England Inc. Participating Transmission Owners Administrative Committee*

Docket No. EL16–38, *Dominion Energy Marketing, Inc. et al.* v. *ISO New England Inc.*

Docket No. EL16–93, *NextEra Energy Resources, LLC and PSEG Companies* v. *ISO New England Inc.*

Docket No. RP16–618, *Algonquin Gas Transmission, LLC*
Docket No. ER12–1650, *Emera Maine*
Docket No. ER14–1409, *ISO-New England Inc.*
Docket No. ER14–1639, *ISO New England Inc. and New England Power Pool Participants Committee*
Docket No. ER13–2266, *ISO New England Inc.*
Docket No. ER15–1429, *Emera Maine*
Docket No. ER16–551, *ISO New England Inc.*
Docket No. ER16–1301, *ISO New England Inc. and Emera Maine*
Docket No. ER16–1041, *ISO New England Inc.*
Docket No. ER16–1904, *ISO New England Inc.*
Docket No. ER16–2126, *ISO New England Inc. and New England Power Pool Participants Committee*
Docket No. ER16–2215, *ISO New England Inc.*
Docket No. ER16–2283, *Genbright LLC*

For more information, contact Michael Cackoski, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6169 or *Michael.Cackoski@ferc.gov.*

Dated: August 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19068 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–485–000]

Notice of Request Under Blanket Authorization: Natural Gas Pipeline Company of America, LLC

Take notice that on July 29, 2016, Natural Gas Pipeline Company of America, LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP16–485–000 a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), requesting authorization to plug and abandon the Karcher 9 injection/withdrawal well and abandon and remove related meter and surface facilities as well as a related lateral and tap at Natural's Herscher Galesville Storage Field located in Kankakee County, Illinois. Natural states that, as a result of the proposed abandonment project, there will be no impact on the Herscher Galesville Storage Field's certificate parameters and that there will be no decrease in service to customers. Natural estimates the cost of the project to be $268,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Bruce H. Newsome, Vice President, Regulatory Products and Services, Natural Gas Pipeline Company of America, LLC, 3250 Lacey Road, Suite 700, Downers Drove, Illinois 60515–7918, by telephone at (630) 725–3070, or by email at *bruce_newsome@kindermorgan.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: August 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19067 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14795–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Shell Energy North America (US), L.P.

On July 26, 2016, Shell Energy North America (US), L.P., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Hydro Battery Pearl Hill Project (Pearl Hill Project or project) to be located on the Columbia River and Rufus Woods Lake, near Bridgeport, Douglas County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed pumped storage project would consist of the following: (1) 215-foot-diameter, 40-foot-high corrugated steel tank (upper reservoir) having a total storage capacity of 29 acre-feet and a usable capacity of 26.7 acre-feet; (2) 6,025-foot-long, 36-inch-diameter steel and high density polyethylene penstock extending between the upper reservoir and the pump/turbines below; (3) 400-foot-long, 100-foot-wide, 40-foot-deep polyurea membrane stretched over a framed plastic structure (lower reservoir) having a total storage capacity of 29 acre-feet and a usable capacity of 26.7 acre-feet; (4) 80-foot-long, 50-foot-wide pontoon barge floating on Rufus Woods Lake containing: Two Pelton turbine-motor/generator units rated for 2.5 megawatts each at 1,310 feet of net head; up to 8 pumps; and a substation; (5) an overhead 2,500-foot-long, 24.9-kilovolt transmission line extending from the project substation to an existing distribution line owned by Douglas County Public Utility District (the point of interconnection); and (6) appurtenant facilities. The estimated annual generation of the Pearl Hill Project would be 10.9 gigawatt-hours.

Applicant Contact: Mr. Brian Johansen, Vice President Power Trading West, Shell Energy North America (US), L.P., 601 W. 1st Ave., Suite 1700, Spokane, Washington 99201; phone: (509) 688–6000.

FERC Contact: Ryan Hansen, email: *ryan.hansen@ferc.gov;* phone: (202) 502–8074.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14795–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14795) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19070 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–104–000]

HORUS Central Valley Solar 1, LLC, HORUS Central Valley Solar 2, LLC v. California Independent System Operator Corporation; Notice of Complaint

Take notice that on July 29, 2016, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure 18 CFR 385.206, HORUS Central Valley Solar 1, LLC and HORUS Central Valley Solar 2, LLC (collectively, HORUS), filed a formal complaint against California Independent System Operator Corporation (Respondent or CAISO) alleging violation of the CAISO Open Access Transmission Tariff and requesting that the Commission (1) direct the CAISO to stop interfering with HORUS' compliance with the interconnection procedures of Western Area Power Administration (Western) for its direct interconnection with Western as an energy-only resource, and (2) stop CAISO from requiring HORUS to go through a second set of interconnection procedures and studies under the CAISO tariff even though HORUS is an energy-only resource and Western is a non-participating transmission owner under the CAISO tariff for the HORUS project, as more fully explained in the complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention, or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online Service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 18, 2016.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19079 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–13–003.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance Filing in ER16–13—Revisions to Att AE re Annual ARR Allocation to be effective 1/28/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5119.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–1649–004.

Applicants: California Independent System Operator Corporation.

Description: Motion for Clarification or, in the Alternative, Petition for Limited Waiver of the California Independent System Operator Corporation.

Filed Date: 8/3/16.

Accession Number: 20160803–5173.

Comments Due: 5 p.m. ET 8/24/16.

Docket Numbers: ER16–1791–002.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Filing of Revisions to MISO–PJM JOA re CMP–ICP Baseline to be effective 7/25/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5110.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–2019–001.

Applicants: Five Points Solar Park LLC.

Description: Tariff Amendment: Change of Proposed Effective Date for Pending Market-Based Rate Tariff to be effective 8/9/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5084.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–2322–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1518R11 Arkansas Electric Cooperative Corp NITSA NOA to be effective 7/1/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5033.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–2369–000.

Applicants: Central Maine Power Company.

Description: § 205(d) Rate Filing: Executed Engineering and Procurement Agreement with FPL Energy Wyman LLC to be effective 7/25/2016.

Filed Date: 8/3/16.

Accession Number: 20160803–5146.

Comments Due: 5 p.m. ET 8/24/16.

Docket Numbers: ER16–2370–000.

Applicants: Freepoint Energy Solutions LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 10/3/2016.

Filed Date: 8/3/16.

Accession Number: 20160803–5149.

Comments Due: 5 p.m. ET 8/24/16.

Docket Numbers: ER16–2371–000.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

Description: § 205(d) Rate Filing: 20160802_IA-Migration compliance to be effective 4/16/2016.

Filed Date: 8/3/16.

Accession Number: 20160803–5155.

Comments Due: 5 p.m. ET 8/24/16.

Docket Numbers: ER16–2372–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Filing of Master Joint Use Pole Agreement to be effective 10/4/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5061.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–2373–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2016–08–04_SA 2722 Notice of Cancellation of Ameren-Dynegy CA (Baldwin) to be effective 8/5/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5073.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–2374–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–08–04_Order 827 Compliance (Attachment X) Filing to be effective 9/21/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5075.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–2375–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: E&P Agreement for RE Mustang Two LLC to be effective 8/5/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5083.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–2376–000.

Applicants: FPL Energy Marcus Hook, L.P.

Description: Compliance filing: Informational Filing, Submission of Tariff Record, and Request for Waiver to be effective 8/5/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5098.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER16–2377–000.

Applicants: FPL Energy MH50, L.P.

Description: Compliance filing: Informational Filing, Submission of Tariff Record, and Request for Waiver to be effective 8/5/2016.

Filed Date: 8/4/16.

Accession Number: 20160804–5099.

Comments Due: 5 p.m. ET 8/25/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19066 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–558–000]

PennEast Pipeline Company, LLC; Notice of Public Comment Meeting Location Change for the Proposed Penneast Pipeline Project

The staff of the Federal Energy Regulatory Commission is providing this notice of a change in the location of public comment meetings for the PennEast Pipeline Project. Since issuance of the *Notice of Availability of the Draft Environmental Impact Statement for the Proposed PennEast Pipeline Project* on July 22, 2016, the Commission staff was notified that The Grand Colonial in Hampton, New Jersey and the Clifford B. Martin Memorial Hall in Ewing, New Jersey are no longer available for the public comment meetings previously scheduled for August 16 and 17, 2016, respectively. Please take note that the public comment meetings are now scheduled at the following alternative locations at the same date and time as previously scheduled.

Date and time	Location
Tuesday, August 16, 2016, 6–10 p.m	Holiday Inn Clinton-Bridgewater, Hunterdon Ballroom, 111 W Main Street, Clinton, NJ 08809, Phone: (908) 735–5111.

Date and time	Location
Wednesday, August 17, 2016, 6–10 p.m	Patriots Theater at War Memorial, George Washington Ballroom, 1 Memorial Drive, Trenton, NJ 08608, Phone: (609) 984–8484.

All other public comment meetings will be held as listed in the Notice of Availability issued on July 22, 2016.

Dated: August 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19072 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF16–7–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Planned 2017 Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 2017 Expansion Project involving construction and operation of facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Lancaster and Chester Counties, Pennsylvania; Cecil County, Maryland; and New Castle, Kent, and Sussex Counties, Delaware. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC, on or before August 31, 2016.

If you sent comments on this project to the Commission before the opening of this docket on May 17, 2016, you will need to file those comments in Docket No. PF16–7–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF16–7–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Planned Project

Eastern Shore plans to construct new pipeline and appurtenant aboveground facilities in the states of Pennsylvania, Maryland, and Delaware. The 2017 Expansion Project facilities consist of (1) approximately 30 miles of pipeline looping in Pennsylvania, Maryland and Delaware; (2) upgrades to existing metering facilities; (3) installation of an additional 3,550 horsepower ("hp") compressor unit at the existing Daleville Compressor Station; and (4) approximately 17 miles of new mainline extension and the addition of two pressure control stations in Sussex County, Delaware.

The 2017 Expansion Project consists of the following components, listed below by geographic area:

Pennsylvania

Lancaster County

Honey Brook Meter and Regulator Station: Replace existing meter runs and pressure/flow control valves at the existing interconnect site with Texas Eastern Transmission, LP ("Texas Eastern"). Modify the existing Honey Brook Meter and Regulator Station and lateral piping to accommodate the installation of upsized mainline taps and valves and the installation of a filter separator, associated piping, and storage tank as well as other ancillary equipment at Eastern Shore's existing interconnect with Texas Eastern. All construction work would be conducted within the fenceline in previously disturbed areas of the existing interconnect site.

Chester County

Parkesburg Loop: Construct approximately 5 miles of 16-inch-diameter pipeline loop[1] beginning at Eastern Shore's existing Parkesburg

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[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

Meter and Regulator Station southward to Lime Stone Road (PA–10).

Jennersville Loop: Construct approximately 7 miles of 24-inch-diameter pipeline loop beginning at Eastern Shore's existing Daleville Compressor Station southward to Hess Mill Road.

Daleville Compressor Station Upgrade: Install a new 3,550 hp gas-fired compressor unit at the existing Daleville Compressor Station.

Maryland

Cecil County

Fair Hill Loop: Construct approximately 6.3 miles of 24-inch-diameter pipeline loop beginning at Eastern Shore's existing block valve on Walker Road in Chester County, Pennsylvania southward to Cecil County, Maryland to tie into the existing Eastern Shore pipeline north of Route 2 near the Maryland/Delaware state line.

Delaware

New Castle County

Middletown Loop: Construct approximately 1 mile of 10-inch-diameter pipeline loop beginning on Peterson Road and extending to a location southeastern of Industrial Road. Construct approximately 0.65 mile of 6-inch-diameter pipeline lateral and meter station from Industrial Road towards Auto Park Drive.

Summit Loop: Construct approximately 0.5 mile of 10-inch-diameter pipeline loop starting along the south side of C&D Canal at Eastern Shore's existing 12- inch aerial crossing southward to tie into the existing Eastern Shore pipeline.

Kent County

Woodside Loop: Construct approximately 5 miles of 16-inch-diameter pipeline loop beginning in Wyoming, Delaware southward to Viola, Delaware.

Sussex County

Hearns Pond Loop: Construct approximately 1.5 miles of 10-inch-diameter pipeline loop along U.S. 13 near Seaford southward to Eastern Shore's existing Seaford Pressure Control Station.

Seaford to Millsboro Segment: Construct approximately 17.0 miles of 10-inch-diameter pipeline extension from Seaford eastward to Eastern Shore's existing Millsboro Meter & Regulator Station near Millsboro.

Laurel Loop: Construct approximately 5.1 miles of 10-inch-diameter pipeline loop along U.S. 13 near Laurel southward to connect with Eastern Shore's existing pipeline.

Pressure Control Stations: Construct two pressure control stations located near the towns of Millsboro and Delmar.

Please see appendix A for a map depicting the general locations of the planned 2017 Expansion Project facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

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[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix B).

Becoming an Intervenor

Once Eastern Shore files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF16–7). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19082 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc.

The New York Independent System Operator, Inc. Electric System Planning Working Group Meeting

August 9, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-08-09.*

The New York Independent System Operator, Inc. Business Issues Committee Meeting

August 17, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2016-08-17.*

The New York Independent System Operator, Inc. Operating Committee Meeting

August 18, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2016-08-18.*

The New York Independent System Operator, Inc. Joint Electric System Planning Working Group and Transmission Planning Advisory Subcommittee Meeting

August 25, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-08-25.*

The New York Independent System Operator, Inc. Management Committee Meeting

August 31, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2016-08-31.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.
New York Independent System Operator, Inc., Docket No. ER15–2059.
New York Independent System Operator, Inc., Docket No. ER13–1942.
New York Transco, LLC, Docket No. ER15–572.
New York Independent System Operator, Inc., Docket No. ER16–966.
New York Independent System Operator, Inc., Docket No. ER16–1968.

Boundless Energy NE., LLC, CityGreen Transmission, Inc., and Miller Bros. v. *New York Independent System Operator, Inc.,* Docket No. EL16–84.

New York Independent System Operator, Inc., Docket No. ER16–1785.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: August 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19075 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–484–000]

El Paso Natural Gas Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on July 21, 2016, El Paso Natural Gas Company, L.L.C. (EPNG), Post Office Box 1087, Colorado Springs, Colorado 80944 filed a prior notice request pursuant to sections 157.205 and 157.208(f) of the Commission's regulations under the Natural Gas Act for authorization to decrease the Maximum Allowable Operating Pressure (MAOP) of a segment of its 6-inch O.D. Hayden Line (Line No. 2023) located in Gila County, Arizona. EPNG proposes to decrease the MAOP of this section of Line No. 2023 from 474 pounds per square inch gauge (psig) down to 85 psig to align the MAOP with the existing operations of Line No. 2023. The proposed MAOP reduction will not alter the capacity of EPNG's system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Francisco Tarin, Director Regulatory Department, El Paso Natural Gas Company, L.L.C., Post Office Box 1087, Colorado Springs, Colorado 80944, or by calling (719) 667–7517.

Any person or the Commission's staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19077 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–109]

Alcoa Power Generating Inc., Cube Yadkin Generation LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On July 25, 2016, Alcoa Power Generating Inc. (transferor) and Cube Yadkin Generation LLC (transferee) filed an application for the transfer of license of the Yadkin Hydroelectric Project No. 2197. The project is located on the Yadkin River in Stanly, Montgomery, Davidson, and Rowan counties, North Carolina. The project does not occupy federal lands.

The applicants seek Commission approval to transfer the license for the Yadkin Hydroelectric Project from the transferor to the transferee.

Applicants Contact: For transferor: Ms. Coralyn M. Benhart, Esq., Alcoa Inc., 201 Isabella Street, 6E04, Pittsburgh, PA 15212–5858, Phone: 412–553–4237, Email: *Coralyn.Benhart@alcoa.com* and Mr. David R. Poe, Bracewell LLP, 2001 M Street NW., Suite 900, Washington, DC 20036, Phone: 202–828–5800, Email: *dave.poe@bracewelllaw.com.* For Transferee: Mr. Eli W.L. Hopson, Cube Hydro Partners, LLC, 2 Bethesda Metro Center, Suite 1330, Bethesda, MD 20814, Phone: 240–482–2714, Email: *ehopson@cubehydro.com* and Ms. Julia S. Wood and Ms. Sharon L. White, Van Ness Feldman, LLP, 1050 Thomas Jefferson Street NW., Seventh Floor, Washington, DC 20007, Phone: 202–298–1800, Email: *jsw@vnf.com* and *slw@vnf.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2197–109.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19081 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2212–049]

Notice of Application for Temporary Variance and Soliciting Comments, Motions To Intervene, and Protests: Domtar Paper Company, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Temporary Variance from license Article 402 and Reservoir Drawdown Plan for Article 404.

b. *Project No.:* P–2212–049.

c. *Date Filed:* June 10, 2016.

d. *Applicants:* Domtar Paper Company, LLC.

e. *Name of Projects:* Rothschild Hydroelectric Project.

f. *Location:* The project is located on the Wisconsin River, in Marathon County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Steve Lewens, Domtar Paper Company, LLC, 200 North Grand Avenue, Rothschild, WI 54474, (715) 355–6268.

i. *FERC Contact:* Mr. Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 15 days from the issuance date of this notice by the Commission. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–2212–049) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee filed a reservoir drawdown plan for Commission approval as required by Article 404 of the project license and is requesting a temporary variance to the reservoir elevation range required by Article 402 for Lake Wausau. Article 402 requires the licensee to maintain the reservoir surface elevation of Lake Wausau between 1160.6 feet and 1160.8 feet National Geodetic Vertical Datum. The licensee is proposing the drawdown to complete concrete repair and maintenance on the dam at the waterline. According to the licensee's plan, the licensee would drawdown the project reservoir starting no earlier than September 12, 2016 at a maximum daily rate of less than 4 inches per day. The drawdown would be completed no later than October 1, 2016, and the drawdown depth would not exceed 5 feet below the 1160.6-foot minimum elevation required by Article 402. The licensee proposes to begin refilling the reservoir no later than November 15, 2016 and would complete refilling to meet the minimum reservoir surface elevation by November 20, 2016.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of this application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19069 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–483–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on July 21, 2016, ANR Pipeline Company (ANR), 700 Louisiana Street, Houston, Texas 77002–2700, filed in Docket No. CP16–483–000, a prior notice request pursuant to sections 157.205, and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), seeking authorization to abandon its Henry 4 injection well and associated well line located at its Loreed Storage Field in Osceola County, Michigan, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the filing should be directed to Linda Farquhar, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, by telephone at: 832–320–5685; or fax at: 832–320–6685; or email at: *linda_farquhar@transcanada.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19076 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7972–000]

Cushnie, Colin E.; Notice of Filing

Take notice that on July 29, 2016, Colin E. Cushnie submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) and part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.2(c).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 19, 2016.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19080 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–473–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bayway Lateral Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Bayway Lateral Project involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in the City of Linden, Union County, New Jersey. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before September 6, 2016.

If you sent comments on this project to the Commission before the opening of this docket on June 29, 2016, you will need to file those comments in Docket No. CP16–473–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–473–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Texas Eastern proposes to construct pipeline and aboveground facilities in the City of Linden, Union County, New Jersey: The Bayway Lateral Project would transport approximately 300,000 dekatherms per day from Texas Eastern's existing Line 38 to serve new commercial customers (the Linden Cogen Power Plant and the Phillips 66 Bayway Refinery).

The Bayway Lateral Project would consist of the following facilities:

- Approximately 2,300 feet of new 24-inch-diameter natural gas pipeline, most of which involves a horizontal directional drill crossing under the New Jersey Turnpike;
- a new fenced metering and regulating station; and
- related appurtenances and ancillary facilities.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 23.4 acres of land for the aboveground facilities and the pipeline. Following construction, Texas Eastern would maintain 6.79 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;

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[1] The appendices referenced in this notice will not appear in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP16–473). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19073 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–97–000]

NextEra Energy Transmission West, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On August 5, 2016, the Commission issued an order in Docket No. EL16–97–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the formula rate protocols of NextEra Energy Transmission West, LLC may be unjust, unreasonable, unduly discriminatory or preferential. *NextEra Energy Transmission West, LLC,* 156 FERC ¶ 61,095 (2016).

The refund effective date in Docket No. EL16–97–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

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[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Dated: August 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19074 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2437–003.

Applicants: Arizona Public Service Company.

Description: Supplement to December 22, 2015 Triennial Market Power Update [SIL Study] of Arizona Public Service Company.

Filed Date: 8/5/16.

Accession Number: 20160805–5167.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER10–2437–007.

Applicants: Arizona Public Service Company.

Description: Notice of Non-Material Change in Status of Arizona Public Service Company.

Filed Date: 8/4/16.

Accession Number: 20160804–5174.

Comments Due: 5 p.m. ET 8/25/16.

Docket Numbers: ER10–2437–008.

Applicants: Arizona Public Service Company.

Description: Notice of Change in Status of Arizona Public Service Company.

Filed Date: 8/5/16.

Accession Number: 20160805–5170.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER15–958–005.

Applicants: Transource Kansas, LLC.

Description: Compliance filing: Transource Kansas Compliance Filing to be effective 4/3/2015.

Filed Date: 8/5/16.

Accession Number: 20160805–5086.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–1934–000.

Applicants: Drift Marketplace, Inc.

Description: Amendment to June 15, 2016 Drift Marketplace, Inc. tariff filing.

Filed Date: 8/5/16.

Accession Number: 20160805–5071.

Comments Due: 5 p.m. ET 8/15/16.

Docket Numbers: ER16–2378–000.

Applicants: ISO New England Inc., Eversource Energy Service Company.

Description: § 205(d) Rate Filing: Revisions to Att. F of ISO–NE OATT to Comply with Normalization Requirements to be effective 6/1/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5094.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2379–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: Peach Solar Energy 3 (Project 2) SGIA Termination Filing to be effective 8/5/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5106.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2380–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: Duke Energy Renewables Solar SGIA Termination Filing to be effective 8/5/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5107.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2381–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: Infigen Energy US Development (Georgia Solar III) LGIA Termination Filing to be effective 8/5/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5108.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2382–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amended Sierra Pacific-Edison Sliver Peak 55kV Interconnection Agreement to be effective 8/6/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5110.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2383–000.

Applicants: Tampa Electric Company.

Description: Compliance filing: Compliance Filing Under Order No 828 to be effective 10/5/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5114.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2384–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: OATT Revised Section 29 (control area requirement) to be effective 10/5/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5128.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2385–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Eight Letter Agreements ACES Projects to be effective 8/8/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5145.

Comments Due: 5 p.m. ET 8/26/16.

Docket Numbers: ER16–2386–000.

Applicants: ISO New England Inc., Central Maine Power Company.

Description: § 205(d) Rate Filing: Revisions to Schedule 21–CMP of ISO–NE OATT to Comply with Normalization Req. to be effective 6/1/2016.

Filed Date: 8/5/16.

Accession Number: 20160805–5150.

Comments Due: 5 p.m. ET 8/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19071 Filed 8–10–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9949–40]

Access to Confidential Business Information by the National Institute for Occupational Safety and Health

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA authorized the National Institute for Occupational Safety and Health (NIOSH), to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI). This is a renewal of a previous authorization.

DATES: Access to the confidential data occurred as a result of an on-going agreement between NIOSH and U.S. Environmental Protection Agency, which granted NIOSH access to all sections of TSCA CBI.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

In July 2016, NIOSH requested access to certain materials, including TSCA CBI submitted to EPA. In a previous notice published in the **Federal Register** on August 18, 2006 (71 FR 47807) (FRL–8087–7), EPA confirmed that NIOSH needed to have access to CBI under all sections of TSCA. EPA is issuing notice once again that NIOSH maintain access to TSCA information, including CBI, in order to meet its obligations to conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore chemical related issues, including those created by new technology in occupational safety and health.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that the Agency will continue to provide NIOSH access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this agreement will take place at EPA Headquarters and the NIOSH Headquarters located at 1150 Tusculum Avenue, Cincinnati, OH 45226–1998.

Clearance for access to TSCA CBI under this arrangement may continue until terminated by either party.

NIOSH personnel were briefed on appropriate security procedures before they were permitted access to the CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 28, 2016.

Pamela S. Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–19121 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9949–41]

Access to Confidential Business Information by the U.S. Consumer Product Safety Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the U.S. Consumer Product Safety Commission (CPSC), to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI). This is a renewal of a previous authorization.

DATES: Access to the confidential data submitted to EPA under all sections of TSCA continues as a result of an ongoing Memorandum of Understanding (MOU) between CPSC and the EPA dated September 23, 1986, which granted CPSC immediate access to all sections of the TSCA CBI.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under a MOU dated September 23, 1986, the CPSC agreed to EPA procedures governing access to CBI submitted to EPA under TSCA.

In accordance with 40 CFR 2.306(h), EPA has determined that CPSC requires access to CBI submitted to EPA under all sections of TSCA to perform successfully their responsibilities under the Consumer Product Safety Act and TSCA. CPSC's personnel are given access to information submitted to EPA under all sections of TSCA. Some of the information is claimed or determined to be CBI.

Under terms of the MOU, CPSC is not required to renew its access to TSCA CBI. EPA publishes this notice to the public from time to time to reiterate and confirm that access to TSCA CBI has been granted to another federal agency. In a previous notice published in the **Federal Register** on November 16, 2011 (76 FR 71018) (FRL–9327–5), EPA confirmed that CPSC continues to have access to CBI under all sections of TSCA. EPA is issuing notice once again to confirm that CPSC maintains access under the existing MOU.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA provides the CPSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this MOU will take place at EPA Headquarters and CPSC's 5 Research Drive, Rockville, Maryland, site in accordance with EPA's TSCA CBI Protection Manual.

CPSC personnel are required to sign nondisclosure agreements and are briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 28, 2016.

Pamela S. Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–19124 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9949–62]

Access to Confidential Business Information by Battelle Memorial Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Battelle Memorial Institute (BMI) of Columbus, OH, to access information which has been submitted to EPA under sections 4, 5, 6, 8(a), 11 and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data occurred on or about July 14, 2016.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004 is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

Under EPA contract number EP–W–16–017, contractor BMI of 505 King Avenue, Columbus, OH, is assisting the Office of Pollution Prevention and Toxics (OPPT) by providing statistical and technical support for the assessment of Toxics Substances. They are also providing statistical, mathematical, field data collection, and technical analysis support and planning for OPPT programs such as Lead Programs and other technology and exposure related studies.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP–W–16–017, BMI required access to CBI submitted to EPA under section(s) 4, 5, 6, 8(a), 11 and 21 of TSCA to perform successfully the duties specified under the contract. BMI personnel were given access to information submitted to EPA under sections 4, 5, 6, 8(a), 11 and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8(a), 11 and 21 of TSCA that EPA has provided BMI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract is taking place at EPA Headquarters and BMI's site located in Columbus, OH, in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until June 12, 2021. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

BMI personnel have signed nondisclosure agreements and were briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 28, 2016.

Pamela S. Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–19126 Filed 8–10–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0110]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 11, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0110.

Title: Application for Renewal of Broadcast Station License, FCC Form 303–S; Section 73.3555(d), Daily Newspaper Cross-Ownership.

Form Number: FCC Form 303–S.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal Governments.

Number of Respondent and Responses: 3,821 respondents, 3,821 responses.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Estimated Time per Response: 1.25–12 hours.

Frequency of Response: Every eight year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 10,403 hours.

Total Annual Costs: $3,886,358.

Nature of Response: Required to obtain or retain benefits. The statutory authority for the collection is contained Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: FCC Form 303–S is used in applying for renewal of license for commercial or noncommercial AM, FM, TV, FM translator, TV translator, Class A TV, or Low Power TV, and Low Power FM broadcast station licenses. Licensees of broadcast stations must apply for renewal of their licenses every eight years.

This collection also includes the third party disclosure requirement of 47 CFR Section 73.3580. This rule requires local public notice of the filing of the renewal application. For AM, FM, Class A TV and TV stations, these announcements are made on-the-air. For FM/TV Translators and AM/FM/TV stations that are silent, the local public notice is accomplished through publication in a newspaper of general circulation in the community or area being served.

47 CFR Section 73.3555 is also included in this information collection. Section 73.3555 states that in order to overcome the negative presumption set forth in 47 CFR Section 73.3555(d)(4) with respect to the combination of a major newspaper and television station, the applicant must show by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth in 47 CFR Section 73.3555(d)(5) will inform this decision. (OMB approval was previously received for the information collection requirements contained in this rule section (waiver showings/filings)).

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–19086 Filed 8–10–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1158]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 12, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments Nicholas A. Fraser, OMB, via email: *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1158.

Title: Transparency Rule Disclosures, Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14–28, FCC 15–24.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for profit entities; State, local or tribal governments.

Number of Respondents and Responses: 3,188 respondents; 3,188 responses.

Estimated Time per Response: 31.2 hours (average).

Frequency of Response: On occasion reporting requirements; Third party disclosure requirement. Obligation to Respond: Mandatory. The statutory authority for the information collection requirements are contained in sections 1, 2, 3, 4, 10, 201, 202, 301, 303, 316, 332, 403, 501, 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, and 47 U.S.C. Sections 151, 152, 153, 154, 160, 201, 202, 301, 303, 316, 332, 403, 501, 503, and 1302.

Total Annual Burden: 99,466 hours.

Total Annualized Capital, Operation, and Maintenance Costs: $640,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impacts(s).

Needs and Uses: The rules adopted in the Protecting and Promoting the Open Internet Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14–28, FCC 15–24, require all providers of broadband Internet access service to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of their broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings. The rules ensure transparency and continued Internet openness, while making clear that broadband providers can manage their networks effectively. The Commission anticipates that small entities may have less of a burden, and larger entities may have more of a burden than the average compliance burden. This is because larger entities serve more customers, are more likely to serve multiple geographic regions, and are not eligible to avail themselves of the temporary exemption from the enhancements granted to smaller providers.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–19087 Filed 8–10–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

ACTION: Notice.

DATES: Tuesday, August 16, 2016 at the conclusion of the open meeting.

ADDRESSES: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 52 U.S.C. 30109. Matters concerning participation in civil actions or proceeding, or arbitration. Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

FOR MORE INFORMATION CONTACT: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary.

[FR Doc. 2016–19246 Filed 8–9–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 25, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. Notice by the *J.T. Compton SBI Trust, James T. Compton, Mountain View, Arkansas,* as trustee; the James Kent Compton SBI Trust, James Kent Compton, Conway, Arkansas, as trustee, the Charles Kevin Compton SBI Trust, Charles Kevin Compton, Little Rock, Arkansas, as trustee; and the Kris David Compton SBI Trust, Kris David Compton, and Debra Lynn Walters Compton, both of Hendersonville, North Carolina, as co-trustees, all as general partners of the Compton Stone Quarry Family Limited Partnership, LLLP, Morrilton, Arkansas and as members of a family control group. The control group also includes the J.T. Compton GST Exempt Trust, James T. Compton as trustee, James T. Compton, individually, Lauren A. Compton, the Niva Compton Lancaster GST Exempt Trust, and the Niva Lancaster Revocable Living Trust, Niva C. Lancaster, Springfield, Missouri, as trustees; and the Daniels Family Trust dated July 12, 2006, Charles Daniels and Sonya Daniels, both of Navarre, Florida, as co-trustees, and the Douglas Lancaster Trust, Sonya Daniels as trustee; to acquire and retain the voting shares of Stone Bancshares, Inc., Mountain View, Arkansas, and thereby acquire and retain shares of Stone Bank, Mountain View, Arkansas.

Board of Governors of the Federal Reserve System, August 5, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–19058 Filed 8–10–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than September 6, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Pinnacle Financial Corporation, Elberton, Georgia,* to acquire 100 percent of the outstanding voting stock of Independence Bank of Georgia, Braselton, Georgia.

Board of Governors of the Federal Reserve System, August 5, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–19059 Filed 8–10–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2016.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Tinka K. Powell 2016 Family Trust; Tinka K. Powell 2016 Family Trust fbo John W. Powell; Tinka K. Powell 2016 Family Trust fbo Mark W. Powell; Tinka K. Powell 2016 Family Trust fbo Ryan J. Powell; and James R. Powell 2016 Family Trust,* all of Dayton, Ohio all to become savings and loan holding companies by acquiring of more than 25 percent of the total equity of Liberty Capital, Inc., Wilmington, Ohio, and thereby acquire control of Liberty Savings Bank, FSB, Wilmington, Ohio.

Board of Governors of the Federal Reserve System, August 5, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–19060 Filed 8–10–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2016–0074; NIOSH 156–B]

National Institute for Occupational Safety and Health Draft Immediately Dangerous to Life or Health (IDLH) Value Profile for Peracetic Acid (CAS #79–21–0)

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of draft document for public comment.

SUMMARY: On May 1, 2015, the Director of the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), published a notice in the **Federal Register** [80 FR 24930] announcing the availability of and a request for comments for the draft immediately dangerous to life or health (IDLH) values and support technical documents, entitled IDLH Values Profiles, for 14 chemicals. Written comments were to be received before the end of the comment period on June 30, 2015. Due to subsequent requests from the public, this Notice announces that NIOSH is seeking further comments on the draft IDLH Value Profile for peracetic acid (CAS #79–21–0) *http://www.cdc.gov/niosh/docket/review/docket156a/pdfs/g1-013-peracetic-acid-cas-79-21-0.pdf* for an additional 60 days.

DATES: Electronic or written comments on the draft IDLH Value Profile for peracetic acid must be received by October 11, 2016.

ADDRESSES: You may submit comments, identified by CDC–2016–0074 and docket number NIOSH 156–B, by either of the two following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, OH 45226.

Instructions: All information received in response to this notice must include the agency name and docket number [CDC–2016–0074; NIOSH 156–B]. All relevant comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: G. Scott Dotson, NIOSH, Education and Information Division, Robert A. Taft Laboratories, 1090 Tusculum Avenue, MS C–32, Cincinnati, Ohio 45226, telephone (513) 533–8540 (not a toll free number).

SUPPLEMENTARY INFORMATION: The proposed IDLH value and draft IDLH Value Profile for peracetic acid is based on the process outlined in the NIOSH Current Intelligence Bulletin 66—Derivation of Immediately Dangerous to Life or Health (IDLH) Values *http://www.cdc.gov/niosh/docs/2014-100/pdfs/2014-100.pdf.* The draft IDLH Value Profile was developed to provide the scientific rationale behind the derivation of the proposed IDLH value for peracetic acid. This includes a detailed summary of the health hazards of acute exposure to high airborne concentrations of peracetic acid and the rationale for the proposed IDLH value for peracetic acid.

To facilitate the review of this draft document, NIOSH requests that the following questions be taken into consideration:

1. Does this document clearly outline the health hazards associated with acute (or short-term) exposures to peracetic acid? If not, what specific information is missing from the document?
2. Are the rationale and logic behind the derivation of an IDLH value for peracetic acid clearly explained? If not, what specific information is needed to clarify the basis of the IDLH value?

3. Are the conclusions supported by the data?
4. Are the tables clear and appropriate?
5. Is the document organized appropriately? If not, what improvements are needed?
6. Are you aware of any scientific data reported in governmental publications, databases, peer-reviewed journals, or other sources that should be included within this document?

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2016–19051 Filed 8–10–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0115]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Manufactured Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 12, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0601. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Manufactured Food Regulatory Program Standards—OMB Control Number 0910–0601—Extension

In the **Federal Register** of July 20, 2006 (71 FR 41221), FDA announced the availability of a draft document entitled "Manufactured Food Regulatory Program Standards (MFRPS)." These program standards have since been finalized and updated multiple times. The current standards are the framework that States should use to design and manage their manufactured food programs. The current version expires on September 30, 2016, and FDA is proposing to update and submit for issuance with a new expiration date. The current and proposed versions of the standards are available at the docket number identified in brackets at the heading of this document. Persons with access to the Internet may submit email requests for a single copy of the draft manufactured food standards to *OP-ORA@fda.hhs.gov.* There are 42 State programs enrolled, in which each State may receive up to $300,000 each year for a period of 5 years provided there is significant conformance with the 10 standards.

In the first year of implementing the program standards, the State program conducts a baseline self-assessment to determine if it meets the elements of each standard. The State program should use the worksheets and forms contained in the draft program standards; however, it can use alternate forms that are equivalent. The State program maintains the documents and verifies records required for each standard. The information contained in the documents must be current and fit-for-use. If the State program fails to meet all program elements and documentation requirements of a standard, it develops a strategic improvement plan that includes the following: (1) The individual program element or documentation requirement of the standard that was not met, (2) improvements needed to meet the program element or documentation requirement of the standard, and (3) projected completion dates for each task.

In the **Federal Register** of February 12, 2016 (81 FR 7544), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received two comments. However, these comments did not address the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Respondent	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
State Departments of Agriculture or Health	42	1	42	376	15,792

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden has been calculated as 376 hours per respondent. This burden was determined by capturing the average amount of time for each respondent to assess the current state of the program and work toward implementation of each of the 10 standards contained in MFRPS. The hours per respondent will change as accounted for in the continuing improvement and self-sufficiency of the program.

Dated: August 8, 2016.

Jeremy Sharp,

Deputy Commissioner for Policy, Planning, Legislation and Analysis.

[FR Doc. 2016–19165 Filed 8–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0971]

Infectious Disease Next Generation Sequencing Based Diagnostic Devices: Microbial Identification and Detection of Antimicrobial Resistance and Virulence Markers; Draft Guidance for Industry and Food and Drug Administration Staff; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the document entitled "Infectious Disease Next Generation Sequencing Based Diagnostic Devices: Microbial Identification and Detection of Antimicrobial Resistance and Virulence Markers; Draft Guidance for Industry and Food and Drug Administration Staff," that appeared in the **Federal Register** of May 13, 2016. In the document, FDA requested comments on FDA's recommendations to assist industry in designing studies to establish the analytical and clinical performance characteristics of infectious disease next generation sequencing-based diagnostic devices for microbial identification and detection of antimicrobial resistance and virulence markers. The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the document published May 13, 2016 (81 FR 29869). Submit either electronic or written comments by September 12, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–0971 for "Infectious Disease Next Generation Sequencing Based Diagnostic Devices: Microbial Identification and Detection of Antimicrobial Resistance and Virulence Markers; Draft Guidance for Industry and Food and Drug Administration Staff." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heike Sichtig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4526, Silver Spring, MD 20993–0002, *Heike.Sichtig@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 13, 2016 (81 FR 29869), FDA published a document with a 90-day comment period to request comments on the types of studies the FDA recommends to support a premarket application of Infectious Disease Next Generation (NGS) Sequencing Based Diagnostic

Devices (Infectious Disease NGS Dx devices). Specifically, FDA recommends Infectious Disease NGS Dx devices that employ targeted or agnostic (metagenomics) sequencing to identify the presence or absence of infectious disease organisms, and/or detect the presence of absence of antimicrobial resistance and virulence markers.

The Agency received requests for a 30-day extension of the comment period for the document. Each request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the document on "Infectious Disease Next Generation Sequencing Based Diagnostic Devices: Microbial Identification and Detection of Antimicrobial Resistance and Virulence Markers; Draft Guidance for Industry and Food and Drug Administration Staff."

FDA has considered the request and is extending the comment period for the document on "Infectious Disease Next Generation Sequencing Based Diagnostic Devices: Microbial Identification and Detection of Antimicrobial Resistance and Virulence Markers; Draft Guidance for Industry and Food and Drug Administration Staff" for 30 days, until September 10, 2016. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying regulation on these important issues.

Dated: August 5, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–19109 Filed 8–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA–1601–N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—March Through June 2016

AGENCY: Office of Medicare Hearings and Appeals (OMHA), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists the OMHA Case Processing Manual (OCPM) manual instructions that were published from March through June, 2016. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

FOR FURTHER INFORMATION CONTACT: Amanda Axeen, by telephone at (571) 777–2705, or by email at *amanda.axeen@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary of the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim, organization and coverage determination, and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage Organizations (MAOs), Medicaid State Agencies, and applicable plans have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D Plan Sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization and coverage determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an independent review entity for Part C organization determination appeals, or by PDPSs and an independent review entity for Part D coverage determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council. In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. As part of that effort, OMHA is establishing a manual, the OMHA Case Processing Manual (OCPM). Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides the specific updates to the OCPM that have occurred in the 3-month period. A hyperlink to the available chapters on the OMHA Web site is provided below. The OMHA Web site contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA Web site list provides more timely access to the current OCPM chapters for those involved in the Medicare claim, organization and coverage determination and entitlement appeals processes. We also believe the Web site offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive immediate notification of any updates to the OMHA Web site. This listserv avoids the need to check the OMHA Web site, as update notifications are sent to subscribers as they occur. If accessing the OMHA Web site proves to be difficult, the contact person listed above can provide the information.

III. How To Use the Notice

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. We expect this notice to be used in concert with future published notices. The OCPM can be accessed at *http://www.hhs.gov/omha/OMHA_Case_Processing_Manual/index.html.*

IV. OCPM Releases for March Through June 2016

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of new OCPM provisions and the subject matter. For future quarterly notices, we will list only the specific updates to the list of manual provisions that have occurred in the covered 3-month period. This information is available on our Web site at *http://www.hhs.gov/omha/OMHA_Case_Processing_Manual/index.html.*

OCPM Division II: Part A/B Claim Determinations

Chapter 6, Pre-Hearing Case Development. This new chapter describes the pre-hearing case development process for requests for hearing on Medicare Part A and Part B reconsiderations issued by Qualified Independent Contractors (QICs) and Quality Improvement Organizations (QIOs), and escalations of requests for reconsideration by a QIC. The pre-hearing case development process helps identify and address evidentiary issues prior to the hearing to avoid delays and helps to ensure legal requirements related to new evidence are observed. The process also assists staff in determining whether a hearing is necessary for a given case. In addition, the process guides OMHA staff on processes available to facilitate the hearing process, such as identifying special needs for hearing participants, discovery, using experts, and conducting pre-hearing conferences.

Dated: July 15, 2016.

Jason M. Green,

Chief Advisor, Office of Medicare Hearings and Appeals.

[FR Doc. 2016–18665 Filed 8–10–16; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44).

Date: September 8, 2016.

Time: 1:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Room 3G31B, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities/Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane MSC 9823, Rockville, MD 20892, (240) 669–5060, *james.snyder@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 5, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19045 Filed 8–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: September 7, 2016.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 3G61, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Travis J. Taylor, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G62B, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5082, *Travis.Taylor@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 4, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19046 Filed 8–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special

Emphasis Panel; NIDCR Clinical Trial Cooperative Agreement SEP.

Date: August 24, 2016.

Time: 3:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Latarsha J. Carithers, Ph.D., Program Director, Division of Extramural Activities, NIDCR, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, 301–594–4859, *latarsha.carithers@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 5, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19044 Filed 8–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Notice is hereby given of a meeting of the Big Data to Knowledge Multi-Council Working Group.

The teleconference meeting will be open to the public as indicated below. Individuals who plan to attend and need assistance should notify the contact person listed below in advance of the meeting.

Name of Working Group: Big Data to Knowledge Multi-Council Working Group.

Date: September 1, 2016.

Open Session: 11:00 a.m.–12:00 p.m. (Eastern Daylight Savings Time).

Agenda: Discussion will review current Big Data to Knowledge (BD2K) activities and newly proposed BD2K initiatives. Open session presentations include BD2K Update and BD2K –Implementation of the Commons.

Place: Teleconference, Call Number: 1–877–668–4493, Passcode: 627 186 653.

This meeting is open to the public but is being held by teleconference only. No physical meeting location is provided for any interested individuals to listen to committee discussions. Any individual interested in listening to the meeting discussions must call: 1–877–668–4493 and use Passcode: 627 186 653 for access to the meeting.

Closed Session: 12:10 p.m.–3:30 p.m.

Agenda: Discussion will focus on review of proposed Funding Plans for BD2K Funding Opportunity Announcements.

Contact Person: Tonya Scott, Scientific Program Analyst, Office of the Associate Director of Data Science (ADDS), National Institutes of Health, One Center Drive, Room 325, Bethesda, Maryland 20892, email: *tonya.scott@nih.gov,* Telephone: 301–402–9817.

Information is also available on the Office of the Associate Director for Data Science's home page: *https://datascience.nih.gov/index* where an agenda and any additional information for the meeting will be posted when available.

Dated: August 5, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19047 Filed 8–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5921–N–11]

The Privacy Act Of 1974, As Amended; Notice of New HUD Certified Housing Counselor and Client Certificate of Housing Counseling Database, System of Records

AGENCY: Office of the Assistance Secretary for Housing, HUD.

ACTION: New System of Records.

SUMMARY: The Department's Office of the Assistant Secretary for Housing, Federal Housing Commissioner is proposing to create a new system of records, the HUD Certified Housing Counselor and Client Certificate of Housing Counseling Database. The Office of the Assistant Secretary for Housing, Federal Housing Commissioner provides support to a nationwide network of housing counseling agencies that provide products and services to current and prospective homeowners, homeowners at risk of default, renters, and the homeless. Public Law 111–203 (2010) amends section 106 of the Housing and Urban Development Act of 1968 to improve the effectiveness of housing counseling services in HUD programs by, among other things, requiring that the entities and individual counselors be certified by HUD as competent to provide such services. The new HUD Certified Housing Counselor and Client Certificate of Housing Counseling Database will allow the Department to collect and track certification examination requirements and client housing counseling certificates issued by counselors participating in the Department's Housing Counseling Program. A detailed description of the new system and its functions are contained in the Purpose statement of this notice.

DATES: *Effective Date:* The notice will be effective September 12, 2016, unless comments are received that would result in a contrary determination.

Comments Due Date: September 12, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Faxed comments are not accepted. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6828 (this is not a toll-free number). Individuals who are hearing- and speech-impaired may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Publication of this notice allows the Department to satisfy its reporting requirement and keep an up-to-date accounting of its system of records publications. The new system of records incorporates Federal privacy requirements and HUD policy requirements. The Privacy Act places on Federal agencies principal responsibility for compliance with its provisions, by requiring Federal agencies to safeguard an individual's records against an invasion of personal privacy; protect records contained in an agency system of records from unauthorized disclosure; ensure that the records collected are relevant, necessary, current, and collected only for their intended use; and adequately safeguard the records to prevent misuse of such information. In addition, this notice demonstrates the Department's focus on following industry best practices to protect the personal privacy of the individuals covered by this system of records.

The system of records states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information in the records, the routine uses made of the records, and the type of exemptions in place for the records. Further, this notice includes the business addresses of the Department officials who will inform interested persons of the procedures whereby they may gain access to and/or request amendments to records pertaining to them.

Pursuant to the Privacy Act and the Office of Management and Budget (OMB) guidelines, a report of this new system of records was submitted to OMB, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform as instructed by paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Agencies Responsibilities for Maintaining Records About Individuals," July 25, 1994 November 28, 2000.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: July 22, 2016.

Patricia A. Hoban-Moore,

Senior Agency Official for Privacy.

SYSTEM OF RECORDS NO.: HSNG.SF/HC.01

SYSTEM NAME:

HUD Certified Housing Counselor and Client Certificate of Housing Counseling Database. The systems impacted are the Housing Counseling System (F11), the Computerized Home Underwriting Management System (F–17), the FHA Connection (F–17C), the Single Family Housing Enterprise Data Warehouse (D64A)), and the HUD Certified Housing Counselor and Client Certificate of Housing Counseling Database, which is a module of F11.

SYSTEM LOCATION:

The database is physically located at the Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, and accessed by HUD field offices with authorized access. Records are maintained and transmitted to this database from the virtual environment of the service providers under contract with HUD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who intend to access the examination or training materials offered by HUD in association with the certification requirements, whether or not they become certified; individuals seeking HUD certified housing counselor certification; or housing counseling clients receiving housing counseling from an agency participating in HUD's Housing Counseling Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records collected by the HUD Certified Housing Counselor and Client Certificate of Housing Counseling Database are as follows:

(1) Individuals registering to access HUD Certified Housing Counselor training: Legal first and last name, mailing address, telephone number, email address, and fax number (if applicable).

(2) Individuals registering to access the HUD Housing Counselor Certification Examination: Legal first and last name, mailing address, telephone number, email address, fax number (if applicable), Social Security number (SSN), and employer's HUD Housing Counseling System (HCS) number (if registrant's employer is a housing counseling agency participating in HUD's Housing Counseling Program). Registrants have the option of providing demographic information: Race, ethnicity, gender and languages in which counseling services are offered. HUD is collecting information on languages to assess the number of examinees that might benefit from certification examination training materials being available in other languages. Information for fee payment will be collected by a third party vendor and will include credit card number, expiration date, and security code.

(3) Individuals registering for HUD Certified Housing Counselor status or for Agency Application Coordinator for FHA Connection: Legal first and last name, mailing address, telephone number, email address, fax number (if applicable), Social Security number (SSN), HUD Housing Counselor Certification System ID number, mother's maiden name, and employer's HUD Housing Counseling System (HCS) ID number, and verification of employing agency's name.

(4) Examination Information: Scores from housing counselor certification examination list of all test-takers who pass the certification examination.

(5) Client Certificate of Housing Counseling: Legal first and last name and address of the housing counseling client receiving counseling services from an agency participating in HUD's Housing Counseling Program; legal first and last name and the Counselor ID number of the counselor completing the client certificate of housing counseling; name, address, telephone number, Employer Identification Number (EIN), and HCS ID number of the agency participating in HUD's Housing Counseling Program; date and type of counseling service received; fees collected or waived; and whether counseling or education occurred in-person or remotely (telephone or Internet).

Note: Certain records maintained by this database pertain to individuals in their role as a sole proprietorship under the Department's Housing Counseling Program. This information may reflect personal information; however, only the records that are personal, about the individual who is the subject of the record, are subject to the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subtitle D of title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010); section 106 of the Housing and Urban Development Act of 1968, 12 U.S.C.§ 1701x; and the Housing and Community Development Act of 1987, 42 U.S.C. 3543, which authorizes HUD to collect SSNs.

PURPOSE(S):

The Dodd-Frank Wall Street Reform and Consumer Protection Act amended section 106 of the HUD Act of 1968 to require that all homeownership and rental housing counseling provided in connection with HUD programs be provided by a HUD Certified housing counselor. The proposed rule published on September 13, 2013, set a timeframe for completing the certification examination. The final rule is under review and will address the timeframe when published. HUD will announce the start date of the certification examination in a separate **Federal Register** notice. The certification examination requires that an individual demonstrate competency by passing a standardized written examination covering six major areas of housing counseling. These areas include: (1) Financial management; (2) property maintenance; (3) responsibilities of homeownership and tenancy; (4) fair housing laws and requirements; (5) housing affordability; and (6) avoidance of, and responses to, rental and mortgage delinquency and avoidance of eviction and mortgage default. In addition to passing the certification examination, individuals must work for a participating agency to become a HUD Certified Counselor. The new database will allow the Department to track housing counselor certifications that will be issued under the Department's Housing Counseling Program, including the initial application/issuance of the HUD certified housing counselor certificate, any reissuance due to changes in employment status, and any revocations of certification. This system may also be used to verify the participating agency's compliance with HUD's Housing Counseling Program requirements. Other statutory changes to improve the effectiveness of housing counseling include increasing the breadth of counseling services so that they are comprehensive with respect to homeownership and rental counseling and issuing client Certificates of Housing Counseling to verify counseling requirements for FHA and other Federal, State, and local programs, as applicable. HUD's Housing Counseling Program currently provides comprehensive homeownership and rental counseling. As noted in the proposed rule published on September 13, 2013, an individual counselor, in contrast to multiple counseling agencies, will have to show competency (through passage of an examination) in identifying and understanding the breadth of homeownership and rental counseling services. Currently, a potential homebuyer or homeowner is likely to seek a housing counseling agency that specializes in a specific area and receive comprehensive counseling by a counselor in that specific area. As a result of increasing the breadth of counseling service knowledge, a housing counselor providing counseling on a specific area requested by the client would also be trained to identify cross-cutting issues that a client may not have identified when seeking out a specific counselor or during the intake process by the housing counseling agency. In addition, certifying individual counselors may further enhance the high regard of agencies and counselors participating in HUD's Housing Counseling Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside HUD as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

(1) To appropriate agencies, entities, and persons to the extent that such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I[1]—HUD's Routine Uses Inventory Notice, published in the **Federal Register**.

(2) To appropriate agencies, entities, and persons when:

(a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

(b) HUD has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and

(c) HUD determines that the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

(3) To third party fee collection service for payment of examination fees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records in this system are stored electronically. The records may be stored on magnetic disc, tape, and digital media. There are no hardcopy records produced that require additional storage.

SAFEGUARDS:

Access to electronic systems is by password and code identification card and is limited to authorized users. There are no hardcopy records produced that require an additional safeguard.

RETRIEVABILITY:

Electronic records are retrieved by name (first and last), agency HCS number, employer, and system ID number. There are no hardcopy records produced that require additional retrieval.

RETENTION AND DISPOSAL:

The records that reside in the system will be kept for 10 years after the final action is taken on the file, document, and/or transaction. Longer retention is authorized if required for business use (Reference: GRS 1.2 DAA–GRS–2013–0008–0001). After the record retention requirements have been met (a minimum of 10 years), the data and records can be purged or deleted from the system. If paper records are generated from the system, they can be archived at the local Federal Records Center after the final action or transaction has taken place. Accordingly, paper records will be destroyed by burning of shredding, and electronic records will be destroyed according to NIST Special Publication 800–88, "Guidelines for Media Sanitization."

SYSTEM MANAGER(S) AND ADDRESS:

Danberry Carmon, Associate Deputy Assistant Secretary, Office of Housing Counseling, 451 Seventh Street SW., Room 9224, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For Information, assistance, or inquiries about the existence of records contact, Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6828. When seeking records about yourself from this system of records or any other HUD system of records, your request must conform with the Privacy Act regulations set forth in 24 CFR part 16. You must first verify your identity by providing your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, your request should:

(1) Explain why you believe HUD would have information on you.

(2) Identify which office of HUD you believe has the records about you.

(3) Specify when you believe the records would have been created.

(4) Provide any other information that will help the Freedom of Information Act (FOIA) staff determine which HUD office may have responsive records.

If your request is seeking records pertaining to another living individual, you must obtain a statement from that individual certifying their agreement for you to access their records. Without the above information, HUD may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16.3, "Procedures for Inquiries." Additional assistance may be obtained by contacting Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, or the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10110, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

(1) Data is provided by State and tribal entities, or others who provide

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[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append1.pdf.*

Federal certification data upon which the housing counseling certification is based.

(2) Data is provided by the requesting applicant at the time of their request for housing counseling certification. This data is generated in the processing of the homeownership and rental housing counseling certification process.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2016–19134 Filed 8–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N134; FXES11130100000–167–FF01E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for recovery permits to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by September 12, 2016.

ADDRESSES: Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE. 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address, or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Please refer to the permit number for the application when submitting comments.

Documents and other information submitted with these applications are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–09155B

Applicant: Renee Robinette Ha, University of Washington, Seattle, Washington

The applicant requests a permit amendment to take (collect blood samples and attach radio transmitters) Mariana crow (*Corvus kubaryi*) in conjunction with survey and population monitoring activities on the island of Rota, Commonwealth of the Northern Mariana Islands, for the purpose of enhancing the species' survival.

Permit Number: TE–02971C

Applicant: Stephen Weller, University of California, Irvine, California

The applicant requests a new recovery permit to remove and reduce to possession (collect leaf cuttings) *Schiedea hawaiiensis* (ma'oli'oli) on the island of Hawaii in conjunction with genetic research for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: August 3, 2016.

Stephen J. Zylstra,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife.

[FR Doc. 2016–19089 Filed 8–10–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16EN05ESB0500]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of revision of a currently approved information collection, (1028–0096).

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on August 31, 2016.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before September 12, 2016.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–0028 Department of the Interior Regional Climate Science Centers'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–0028 Department of the Interior Regional Climate Science Centers' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Robin O'Malley, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 516, Reston, VA 20192 (mail); 703–648–4086 (phone); or *romalley@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Geological Survey (USGS) manages eight Department of the Interior (DOI) Climate Science Centers (CSC). Each CSC involves a cooperative agreement with a host institution. The initial host institution agreements will be re-competed, requiring collection of information from potential host institutions. In addition, this information collection addresses quarterly and annual reporting required of host institutions.

II. Data

OMB Control Number: 1028–0096.

Form Number: NA.

Title: Department of the Interior Regional Climate Science Centers.

Type of Request: Revision of a currently approved information collection.

Respondent Obligation: Required to obtain or retain benefits.

Frequency of Collection: Information will be collected one time every five years (approximately) for each CSC, to enable re-competition of CSC hosting agreements. In addition, host institutions are required to fill four quarterly financial statements and one annual progress report.

Description of Respondents: Institutions that are expected to propose to serve as CSC host or partner institutions include State, local government, and tribal entities, including academic institutions. Existing host institutions are State academic institutions.

Estimated Total Number of Annual Responses: USGS expects to request proposals for a maximum of three CSCs in any year, and to receive an average of five proposals per CSC-request, for a total of fifteen proposals in any single year. USGS expects to enter into hosting agreements with a minimum of eight CSC host institutions. Thus USGS would request quarterly financial statements and annual progress reports covering host agreements from eight institutions. In addition, USGS expects to have in place approximately forty cooperative agreements per year addressing specific research projects funded under these hosting agreements. Each of these 40 agreements requires quarterly financial statements and one annual progress report.

Estimated Time per Response: Each proposal for CSC hosting is expected to take 200 hours to complete. The time required to complete quarterly and annual reports for any specific host cooperative agreement or research project agreement is expected to total 2.5 hours per report.

Estimated Annual Burden Hours: A maximum of 3,000 hours in years when proposals are requested, and 1 hours in those years with only quarterly and annual reporting.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On September 1, 2015, we published a **Federal Register** notice (80 FR 52786) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on November 2, 2015. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Douglas Beard,

Chief of National Climate Change and Wildlife Science Center.

[FR Doc. 2016–19110 Filed 8–10–16; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–993]

Certain Overflow and Drain Assemblies for Bathtubs and Components Thereof; Notice of the Commission's Determination Not To Review an Initial Determination Terminating Better Enterprise Co. Ltd. From the Investigation; Issuance of Consent Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 6) terminating Better Enterprise Co. Ltd. ("BEC") based on a consent order stipulation and proposed consent order. The Commission terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 9, 2016, based on a complaint and supplements filed on behalf of WCM Industries, Inc., ("complainant") of Colorado Springs, Colorado. 81 FR 28104 (May 9, 2016). The complaint as supplemented alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain overflow and drain assemblies for bathtubs and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,302,220; U.S. Patent No. 8,321,970; U.S. Patent No. 8,584,272; and U.S. Patent No. 9,200,436. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Notice of Investigation names Bridging Partners Corporation ("BPC") of Taipei, Taiwan; BEC of Taipei, Taiwan; and Everflow Industrial Supply Corporation ("EIS") of Changhua, Taiwan as respondents. BPC and EIS were previously terminated from the investigation based on consent order stipulations and consent orders. Order No. 3 (unreviewed).

On July 1, 2016, complainant filed a motion to terminate the investigation as to BEC based on a consent order stipulation and proposed consent order.

On July 11, 2016, the ALJ granted the motion. Order No. 6. The ALJ found that the consent order stipulation and the proposed consent order comply with the Commission's rules. The ALJ also found that there is no evidence that termination of the investigation as to BEC would be contrary to the public interest. *Id.* at 4. No petitions for review were filed.

The Commission has determined not to review the subject ID and has issued a consent order. Since BEC is the last remaining respondent in the investigation, this action terminates the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–19065 Filed 8–10–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1279 (Final)]

Hydrofluorocarbon Blends and Components From China; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of hydrofluorocarbon ("HFC") blends from China, provided for in subheading 3824.78.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").[2] The Commission further determines that a U.S. industry is not materially injured or threatened with material injury by reason of imports of HFC components from China.

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted this investigation effective June 25, 2015, following receipt of a petition filed with the Commission and Commerce by the American HFC Coalition, and its members: Amtrol, Inc., West Warwick, Rhode Island; Arkema, Inc., King of Prussia, Pennsylvania; The Chemours Company FC, LLC, Wilmington, Delaware; Honeywell International Inc., Morristown, New Jersey; Hudson Technologies, Pearl River, New York; Mexichem Fluor Inc., St. Gabriel, Louisiana; Worthington Industries, Inc., Columbus, Ohio; and District Lodge 154 of the International Association of Machinists and Aerospace Workers.[3] The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of hydrofluorocarbon blends and components from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 1, 2016 (81 FR 10662). The hearing was held in Washington, DC, on June 21, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on August 5, 2016. The views of the Commission are contained in USITC Publication 4629 (August 2016), entitled *Hydrofluorocarbon Blends and Components from China: Investigation No. 731–TA–1279 (Final).*

By order of the Commission.

Issued: August 5, 2016

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–19064 Filed 8–10–16; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on HFC blends from China.

[3] The Commission did not grant Amtrol, Inc. and Worthington Industries, Inc. interested party status because neither qualifies as an interested party under 19 U.S.C. 1677(9). Neither firm produces or blends the subject products.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–967]

Certain Document Cameras and Software for Use Therewith; Issuance of a Limited Exclusion Order and Cease and Desist Order Against the Respondent Found in Default; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order denying entry of certain document cameras and software for use therewith and a cease and desist order against QOMO HiteVision, LLC ("QOMO"). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S.

International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 24, 2015, based on a complaint filed on behalf of Pathway Innovations & Technologies, Inc. of San Diego, California ("Complainant"). 80 FR 57642 (September 24, 2015). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain document cameras and software for use therewith by reason of infringement of certain claims of U.S. Design Patent No. D647,906; U.S. Design Patent No. D674,389; U.S. Design Patent No. D715,300; and U.S. Patent No. 8,508,751 ("the '751 patent"). The Commission's notice of investigation named the following respondents: Recordex USA, Inc., of Long Island City, New York ("Recordex"); QOMO of Wixom, Michigan; and Adesso, Inc. of Walnut, California ("Adesso"). The Office of Unfair Import Investigations was named as a party but has subsequently withdrawn from the investigation. Adesso was terminated based on a consent order stipulation and consent order. Order No. 5 (unreviewed) (Nov. 23, 2015). QOMO was found to be in default. Order No. 10 (unreviewed) (Dec. 7, 2015). Recordex was terminated based on settlement. Order No. 19 (unreviewed) (May 13, 2016).

On December 7, 2015, the Commission determined not to review an initial determination finding QOMO in default and later requested briefing from the parties and the public on the issues of remedy, the public interest, and bonding. Complainant filed a submission requesting a limited exclusion order ("LEO") and a cease and desist order ("CDO") against QOMO, and arguing that none of the public interest factors weighs against granting the LEO and CDO. Complainant requested that QOMO not be afforded the opportunity to import during the period of Presidential review, or in the alternative, that the bond be set at 100 percent of entered value in accordance with the Commission practice for defaulting respondents.

The Commission finds that the statutory requirements for relief under section 337(g)(1), (19 U.S.C. 1337(g)(1)) are met with respect to QOMO. In addition the Commission finds that the public interest factors enumerated in section 337(g)(1) do not preclude issuance of the statutory relief.

The Commission has determined that the appropriate remedy in this investigation is (1) an LEO prohibiting the unlicensed entry of certain document cameras and software for use therewith that are manufactured abroad by or on behalf of, or imported by or on behalf of, QOMO that infringe one or more of claims 1–10, 12–18, and 20 of the '751 patent; and (2) a CDO prohibiting QOMO from importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for certain document cameras and software for use therewith that infringe one or more of claims 1–10, 12–18, and 20 of the '751 patent.

Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the LEO or CDO. The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 5, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–19037 Filed 8–10–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Industrial Control System Software, Systems Using Same, and Components Thereof, DN 3165;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Rockwell Automation, Inc. on August 5, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain industrial control system software, systems using same, and components thereof. The complaint names as respondents 3S-Smart Software Solutions, GmbH of Germany; Advantech Corporation of Milpitas, CA; and Advantech Co., Ltd. of Taiwan. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

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[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3165'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[5] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[6]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 8, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–19084 Filed 8–10–16; 8:45 am]

BILLING CODE 7020–02–P

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[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] All contract personnel will sign appropriate nondisclosure agreements.

[6] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0055]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Identification of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 FR 36584, on June 7, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, 99 New York Ave. NE., Washington, DC 20226 at email: *eipb-informationcollection@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Identification of Explosive Materials

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,205 respondents will take 3 seconds to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 956 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: August 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19096 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0004]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Interstate Firearms Shipment Report of Theft/Loss (ATF F 3310.6)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 *FR* 36957, on June 8, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Neil Troppman, National Tracing Center, Law Enforcement Support Branch, 244 Needy Road, Martinsburg, WV 25405, at telephone number: 304–260–3643. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF F 3310.6.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Federal Government.

Abstract: 27 CFR part 478 of Federal Regulations requires Federal Firearms Licensees' who discovers a firearm it shipped was stolen or lost in transit, the transferor/sender FFL must report the theft or loss to ATF and to the appropriate local authorities within 48 hours of discovery on ATF Form 3310.11.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 550 respondents will take 20 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 182 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice

Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: August 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19094 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0046]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 11, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rinell Lawrence, Firearms Industry Program Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 99 New York Ave. NE., Washington, DC 20226 at email and telephone: *fipb-informationcollection@atf.gov* and 202–648–7190. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83–I):* Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

a. *Primary:* State, Local, or Tribal Government.

b. *Other (if applicable):* None.

Abstract: The letter is used by a law enforcement officer to purchase handguns to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50,000 respondents will take 8 minutes to complete and file the letter.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,667 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: August 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19095 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Node.Js Foundation

Notice is hereby given that, on July 14, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Node.js Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dynatrace LLC, Waltham, MA, has been added as a party to this venture.

Also, Famous Industries, Inc., San Francisco, CA; and Progress Software, Bedford, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Node.js Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, Node.js Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on April 26, 2016. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on June 9, 2016 (81 FR 37215).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19038 Filed 8–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Heterogeneous System Architecture Foundation

Notice is hereby given that, on July 7, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Heterogeneous System Architecture Foundation (''HSA Foundation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Friedrich-Alexander-University Erlangen-Nurnberg (FAU), Erlangen, GERMANY, has been added as a party to this venture.

Also, Sonics, Inc., Milpitas, CA; Tensilica, Inc., Santa Clara, CA; STMicroelectronics International, Amsterdam, THE NETHERLANDS; Analog Devices, Inc., Norwood, MA; Industrial Technology Research Institute of Taiwan, Hsinchu, TAIWAN; VIA Technologies, Inc., New Taipei City, TAIWAN; System Software Lab National Tsing Hua University, Hsinchu, TAIWAN; and Tsinghua University, Beijing, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture. No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HSA Foundation intends to file additional written notifications disclosing all changes in membership.

On August 31, 2012, HSA Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 11, 2012 (77 FR 61786).

The last notification was filed with the Department on April 12, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 18, 2016 (81 FR 31259).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19042 Filed 8–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on July 19, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), R Consortium, Inc. (''R Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IBM Corporation, Armonk, NY, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on May 23, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2016 (81 FR 40350).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19043 Filed 8–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium (Formerly National Chemical Biological Defense Consortium)

Notice is hereby given that, on June 23, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Chemical Biological Defense Consortium (''NCBDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. National Chemical & Biological Defense Consortium (''NCBDC'') has changed its name to Medical CBRN Defense Consortium (''MCDC''). Specifically, AdjuvanceTechnologies, Inc., New York, NY; AEQUOR, Inc., Oceanside, CA; AktiVax, Inc., Boulder, CO; Alchem Laboratories Corp., Alachua, FL; Artificial Cell Technologies, Inc., New Haven, CT; Bach Pharma, Inc., North Andover, MA; Battelle Memorial Institute, Columbus, OH; Bryllan LLC, Brighton, MI; Creare LLC, Hanover, NH; CUBRC, Inc., Buffalo, NY; Data Sciences International, Inc., St. Paul, MN; First Line Technology, LLC, Chantilly, VA; Ginkgo Bioworks, Boston, MA; Harris Corporation, Herndon, VA; IIT Research Institute, Chicago, IL; Integrated Biotherapeutics, Inc., Gaithersburg, MD; InvivoSciences, Inc., Madison, WI; Joint Research and Development, Inc., Stafford, VA; Mapp BioPharmaceuticals, San Diego, CA; MaxCyte, Incorporated, Gaithersburg, MD; MRIGlobal, Kansas City, MO; Nanotherapeutics, Inc., Alachua, FL; Philips Healthcare, Andover, MA; Profectus BioSciences, Inc., Baltimore, MD; ProModel Corporation, Allentown, PA; QuickSilver Analytics, Inc., Belcamp, MD; SciTech Services, Inc., Havre de Grace, MD; SENTEL Corporation, Alexandria, VA; Shield Analysis Technology, LLC, Manassas, VA; Southwest Research Institute, San Antonio, TX; SRI International, Menlo Park, CA; Tech62, Fairfax, VA; Triton Systems, Inc., Chelmsford, MA; University of Pittsburgh, Pittsburgh, PA; University of Tennessee, Knoxville, Knoxville, TN; and Verndari Inc., Napa, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, NCBDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19035 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Platform for NFV Project, Inc.

Notice is hereby given that, on July 20, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Platform for NFV Project, Inc. (''Open Platform for NFV Project'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Beijing Internet Institute, Beijing, PEOPLE'S REPUBLIC OF CHINA; Lenovo US, Morrisville, NC; and Qualcomm Technologies Inc., San Diego, CA, have been added as parties to this venture.

Also, Ixia, Calabasas, CA, has withdrawn as a party to this venture.

In addition, Freescale Semiconductor, Inc., has changed its name to NXP Semiconductors, Austin, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Platform for NFV Project intends to file additional written notifications disclosing all changes in membership.

On October 17, 2014, Open Platform for NFV Project filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 14, 2014 (79 FR 68301).

The last notification was filed with the Department on May 2, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 24, 2016 (81 FR 32776).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19039 Filed 8–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODPI, Inc.

Notice is hereby given that, on July 14, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODPi, Inc. (''ODPi'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Splunk Inc., San Francisco, CA; and 4C Decision, Herndon, VA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODPi intends to file additional written notifications disclosing all changes in membership.

On November 23, 2015, ODPi filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 23, 2015 (80 FR 79930).

The last notification was filed with the Department on April 29, 2016. A notice was published in the **Federal Register** pursuant to Section 6(h) of the Act on May 24, 2016 (81 FR 32777).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19036 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0004]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection Application for Permit To Export Controlled Substances, Application for Permit To Export Controlled Substances for Subsequent Reexport—DEA Forms 161, 161R

AGENCY: Drug Enforcement Administration, Department of Justice

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 38220, June 13, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Permit to Export Controlled Substances; Application for Permit to Export Controlled Substances for Subsequent Reexport.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Forms: 161, 161R. The applicable component within the Department of Justice is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: Title 21, Code of Federal Regulations (21 CFR), Sections 1312.21 and 1312.22 require that any person who desires to export or reexport controlled substances listed in schedules I or II, any narcotic substance listed in schedules III or IV, or any non-narcotic substance in schedule III which the Administrator has specifically designated by regulation in § 1312.30, or any non-narcotic substance in schedule IV or V which is also listed in schedule I or II of the Convention on Psychotropic Substances, must have an export permit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that 134 respondents, with 6,116 responses annually to this collection. The DEA estimates that it takes .5 hour to complete the form.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 3,301 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: August 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19090 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0023]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection Import/Export Declaration for List I and List II Chemicals—DEA Forms 486, 486A

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 38218, June 13, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Import/Export Declaration for List I and List II Chemicals.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Forms: 486, 486A. The applicable component within the Department of Justice is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: Section 1018 of the Controlled Substances Import and Export Act (CSIEA) (21 U.S.C. 971) and Title 21 Code of Federal Regulations (21 CFR) part 1313 require any persons who import, export, or conduct international transactions involving list I and list II chemicals are required to establish a system of recordkeeping and report certain information regarding those transactions to the DEA. The chemicals subject to control are used in the clandestine manufacture of controlled substances.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

	Number of annual respondents*	Number of annual responses	Average time per response (minutes)	Total annual hours
DEA–486—Import (paper)	342	1,359	17	385
DEA–486—Import (online)		855	17	242
DEA–486—Export (paper)		2,533	20	844
DEA–486—Export (online)		7,743	20	2,581
DEA–486—International (paper)		422	17	120
DEA–486A—Import (paper)		333	20	111
DEA–486A—Import (online)		416	20	139
Total	342	13,661		4,422

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 4,442 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: August 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19092 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of an Existing Collection in Use Without an OMB Control Number Credit Card Payment Form (1–786)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 11, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (facsimile: 304–625–5093). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Approval of an Existing Collection in Use without an OMB Control Number.

2. *The Title of the Form/Collection:* Credit Card Payment Form

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1–786.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. This collection is necessary for individuals to submit payment to receive a copy of their personal identification record.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Annually, the FBI receives 80,000 credit card payment forms, therefore there are 80,000 respondents. The form requires 2 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,667 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 08, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19093 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0009]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection Controlled Substances Import/Export Declaration—DEA Form 236

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement

Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 *FR* 38219, June 13, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Controlled Substances Import/Export Declaration.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: DEA Form 236. The Department of Justice component is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: DEA Form 236 enables the DEA to monitor and control the importation and exportation of controlled substances. Analysis of these documents provides the DEA with important intelligence regarding the international commerce in controlled substances and assists in the identification of suspected points of diversion.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that there are 157 total respondents for this information collection. In total, 157 respondents submit 6,321 responses, with each response taking 17 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 1,779 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: August 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19091 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; United States Victims of State Sponsored Terrorism Fund Application Form

AGENCY: Criminal Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Criminal Division, United States Victims of State Sponsored Terrorism Fund, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Additional comments especially on the estimated public burden or associated response time, suggestions, or need for a copy of the proposed information collection instrument with instructions, or additional information, should be directed to either the Special Master, United States Victims of State Sponsored Terrorism Fund, or the Chief, Program Management and Training Unit, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, telephone (202) 353–2046.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application Form for the U.S. Victims of State Sponsored Terrorism Fund.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: N/A. The U.S. Victims of State Sponsored Terrorism Fund, U.S.

Department of Justice, Criminal Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The U.S. Victims of State Sponsored Terrorism Fund (Fund) was established to provide compensation to certain individuals who were injured as a result of acts of international terrorism by a state sponsor of terrorism. Under 42 U.S.C. 10609(c), an eligible claimant is (1) a U.S. person, as defined in 42 U.S.C. 10609(j)(8), with a final judgment issued by a U.S. district court under state or federal law against a state sponsor of terrorism and arising from an act of international terrorism, for which the foreign state was found not immune under provisions of the Foreign Sovereign Immunities Act, codified at 28 U.S.C. 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008); (2) a U.S. person, as defined in 42 U.S.C. 10609(j)(8), who was taken and held hostage from the United States Embassy in Tehran, Iran, during the period beginning November 4, 1979, and ending January 20, 1981, or the spouse and child of that U.S. person at that time, and who is also identified as a member of the proposed class in case number 1:00–CV–03110 (EGS) of the United States District Court for the District of Columbia; or (3) the personal representative of a deceased individual in either of those two categories.

The information collected from the Fund's Application Form will be used to determine whether applicants are eligible for compensation from the Fund, and if so, the amount of compensation to be awarded. The Application Form consists of parts related to eligibility and compensation. The eligibility parts seek the information required by the Justice for Victims of State Sponsored Terrorism Act to determine whether a claimant is eligible for payment from the Fund, including information related to: Participation in federal lawsuits against a state sponsor of terrorism under the Foreign Sovereign Immunities Act; being taken and held hostage at the U.S. Embassy in Tehran, Iran, from the period beginning November 4, 1979, and ending January 20, 1981; or being spouses and children of such hostages. The compensation parts seek the information required by the Justice for Victims of State Sponsored Terrorism Act to determine the amount of compensation for which the claimant is eligible. Specifically, the compensation parts seek information regarding any payments from sources other than the Fund that the claimant received, is entitled to receive, or is scheduled to receive, as a result of the act of international terrorism by a state sponsor of terrorism and the amount of compensatory damages awarded the claimant in a final judgment.

5. *An estimate of the total number of applicants and the amount of time estimated for an average applicant to respond:* It is estimated that 700 respondents may complete the Application Form. It is estimated that respondents will complete the paper form in an average of 2 hours, and the electronic form in an average of 1.5 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1,400 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E–405B, Washington, DC 20530.

Dated: August 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19119 Filed 8–10–16; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and Section 166(i)(4) of the Workforce Innovation and Opportunity Act (WIOA) [29 U.S.C. 3221(i)(4))], notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIOA.

DATES: The meeting will begin at 9:00 a.m., (Pacific Time) on Thursday, August 25, 2016, and continue until 5:00 p.m. that day. The meeting will reconvene at 9:00 a.m., on Friday, August 26, 2016, and adjourn at 4:00 p.m. that day. The period from 3:00 p.m. to 5:00 p.m. on August 25, 2016, will be reserved for participation and comment by members of the public.

ADDRESSES: The meeting will be held at the Peppermill, 2707 South Virginia Street, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Athena R. Brown, DFO, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Members of the public not present may submit a written statement on or before August 22, 2016, to be included in the record of the meeting. Statements are to be submitted to Athena R. Brown, Designated Federal Officer (DFO), U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4209, Washington, DC 20210. Persons who need special accommodations should contact Craig Lewis at (202) 693–3384, at least two business days before the meeting. The formal agenda will focus on the following topics: (1) Implementation of the Workforce Innovation and Opportunity Act (WIOA); (2) Overview of WIOA and the Section 166 Program, (3) Performance Indicators and Discussion of Additional Measures; (4) Training and Technical Assistance; (5) Council and Workgroup Updates and Recommendations; (6) Strategic Objectives for Program Year 2017–2018; and (7) Public Comment.

Portia Wu,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2016–19112 Filed 8–10–16; 8:45 am]

BILLING CODE 4501–FR–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Coal Mine Dust Sampling Devices

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Coal Mine Dust Sampling Devices," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 12, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1219-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Coal Mine Dust Sampling Devices information collection requirements codified in regulations 30 CFR 74.7, 74.8, 74.11, 74.13, and 74.16. Continuous Personal Dust Monitors (CPDMs) determine the concentration of respirable dust in coal mines. CPDMs must be designed and constructed for coal miners to wear and operate without impeding their ability to perform their work safely and effectively. CPDMs must also be durable to perform reliably in normal working conditions of coal mines. Paperwork requirements imposed on applicants are related to the application process and CPDM testing procedures. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a), 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0147.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 18, 2016 (81 FR 14895).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0147. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Coal Mine Dust Sampling Devices.

OMB Control Number: 1219–0147.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1.

Total Estimated Number of Responses: 1.

Total Estimated Annual Time Burden: 41 hours.

Total Estimated Annual Other Costs Burden: $296,455.

Dated: August 8, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–19120 Filed 8–10–16; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/.* This information may also be requested by telephoning, 703/292–8687.

Dated: August 5, 2016.

Crystal Robinson,

Committee Management Officer.

Dated: August 5, 2016.

[FR Doc. 2016–19050 Filed 8–10–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[EA–16–016; NRC–2016–0163]

Confirmatory Order; In the Matter of AREVA, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued a confirmatory order (Order) to AREVA, Inc. (AREVA), confirming the agreement reached in an Alternative Dispute Resolution mediation session held on June 13, 2016. This Order will resolve the issues that were identified during an NRC records review related to AREVA's export of nuclear components and equipment.

DATES: The confirmatory order was issued on August 4, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0163 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0163. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions about this Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert Fretz, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; telephone: 301–415–1980, email: *Robert.Fretz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 4th day of August 2016.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

United States of America

Nuclear Regulatory Commission

In the Matter of AREVA, Inc. EA–16–016

Confirmatory Order (Effective Upon Issuance)

I

AREVA, Inc. (AREVA) is a multinational corporation specializing in nuclear power and renewable energy services, including the export of reactor components under Part 110 of title 10 of the *Code of Federal Regulations* (10 CFR). AREVA's headquarters is located in Charlotte, North Carolina.

This Confirmatory Order (CO) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on June 13, 2016.

II

On September 9, 2015, AREVA met with representatives from the NRC's Office of Nuclear Material Safety and Safeguards (NMSS) to discuss licensee responsibilities under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (hereinafter referred to as the Additional Protocol). During the meeting, AREVA officials informed NMSS representatives that AREVA may have exported reactor components to other countries without making the notifications required by the Additional Protocol and the NRC's regulations in 10 CFR 110.54(a)(1). Subsequently, AREVA conducted a review of its export activities, and later notified the NRC that it had exported zirconium tubes between June 1, 2009, and March 18, 2015, some of which went to nuclear power plants located in Taiwan, and that it had exported a reactor coolant pump (RCP) to France on July 25, 2014. On October 29, 2015, AREVA provided the required export notifications to the U.S. Department of Commerce (DOC), and on November 3, 2015, this information was provided to the NRC (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML16056A349).

Section 110.54(a)(1) of 10 CFR states, in part, that reports of exports of nuclear facilities and equipment shipped during the previous quarter must be made by licensees making exports under the general license or specific license in 10 CFR part 110 by January 15, April 15, July 15, and October 15 of each year on DOC/NRC Forms AP–M or AP–13, and associated forms. In accordance with 10 CFR 110.54(a)(2), these required reports must be submitted to the DOC, Bureau of Industry and Security. The reports must contain information on all nuclear facilities, equipment, and non-nuclear materials listed in Annex II of the Additional Protocol.

Between June 2009 and March 2015, AREVA failed to report exports under the general license and specific license in 10 CFR part 110 of nuclear equipment shipped during the previous quarter. Specifically, AREVA exported nuclear reactor equipment and components from the United States including components described in paragraphs (4), (5), (6), and (7) of Appendix A to 10 CFR part 110 and failed to submit quarterly reports to the NRC and DOC as noted by the following examples:

1. On June 1, 2009, AREVA exported zircalloy boiling water reactor fuel channels to a nuclear power plant located in Taiwan.
2. On April 26, 2012, AREVA exported zirconium tubes designed and prepared for use as fuel cladding to CEZUS in France.
3. On December 3, 2013, AREVA exported inert zircalloy fuel rods designed and prepared for use as fuel cladding to a nuclear power plant located in Taiwan.
4. On February 20, 2014, AREVA exported zirconium fuel assembly guide tubes to CEZUS in France.
5. On March 18, 2015, AREVA exported zirconium tubes designed and prepared for use as fuel cladding to GDE–SA (a fuel recycler) in France.
6. On July 25, 2014, AREVA exported an RCP (without motor), especially designed and prepared for circulation of the primary coolant

in a nuclear reactor, to Jeumont in France.

Reactor coolant pumps, reactor pressure tubes, fuel channels, zirconium tubes designed and prepared for use as fuel cladding, and zirconium fuel assembly guide tubes are nuclear reactor equipment and components described in paragraphs (4), (5), (6), and (7) of Appendix A to 10 CFR part 110, and are listed in Annex II of the Additional Protocol. France and Taiwan are also listed in 10 CFR 110.26(b) as approved destinations for the export of nuclear reactor components under a general license. As such, AREVA was required by 10 CFR 110.54(a)(1) to submit quarterly export reports to the DOC, Bureau of Industry and Security.

NRC staff reviewed the export notifications submitted on November 3, 2015, and during this review, identified a second apparent violation regarding the export of an RCP (without motor) to France without a specific license authorizing the export (as listed in example 6 above). Section 110.5 of 10 CFR states, in part, that no person may export any nuclear equipment listed in 10 CFR 110.8 unless authorized by a general or specific license issued under 10 CFR part 110. Section 110.20(a) of 10 CFR states that a person may use an NRC general license as authority to export or import nuclear equipment or material, if the nuclear equipment or material to be exported or imported is covered by the NRC general licenses described in § 110.21 through 110.27. If an export or import is not covered by an NRC general license, a person must file an application for a specific license in accordance with § 110.31 through 32.

On July 25, 2014, AREVA exported nuclear equipment listed in 10 CFR 110.8 to France that was not authorized by a general license and without filing an application for a specific license in accordance with § 110.31 through 32. In its annual report of exports required by 10 CFR 110.54(c), dated January 16, 2015 (non-public), AREVA stated that it had exported an "RCP" under the 10 CFR 110.26 general license. AREVA inappropriately keyed the component to paragraph (9) of Appendix A to 10 CFR part 110, "Illustrative List of Nuclear Reactor Equipment under NRC Export Licensing Authority." However, reactor primary coolant pumps are described in paragraph (4) of Appendix A to 10 CFR part 110 and are, therefore, not permitted to be exported under the NRC general license in 10 CFR 110.26.

On April 21, 2016, the NRC issued a letter to AREVA that detailed the results of the NRC's findings, as described above, and outlined two apparent violations (ADAMS Accession No. ML16110A402). The apparent violation involved (1) the failure to make quarterly reports of the export of nuclear reactor components subject to the Additional Protocol and as required by the NRC's regulations; and (2) the export of an RCP (without motor) to France without a specific license authorizing the export.

The first apparent violation impacted the U.S. Government's ability to comply with international obligations for reporting certain exports under the Additional Protocol. The second apparent violation raised significant regulatory concerns because an RCP is considered a "major reactor component" and requires the highest level of review under the Atomic Energy Act of 1954, as amended, and 10 CFR part 110. Specifically, the export of an RCP would require a NRC Commission-level review and solicitation of U.S. Executive Branch views including government-to-government assurances from EURATOM in accordance with the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the European Atomic Energy Community and the United States of America (commonly referred to as the Section 123 Agreement). AREVA's failure to apply for and receive an export license significantly impacted the NRC's regulatory process.

In the April 21, 2016, letter the NRC offered AREVA the opportunity to: (1) request a Predecisional Enforcement Conference (PEC) or (2) request an ADR. In response to the NRC's letter, AREVA requested to use the NRC's ADR process. On June 13, 2016, AREVA and the NRC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This CO is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, AREVA and the NRC reached a preliminary settlement agreement. The elements of the agreement included corrective actions that AREVA stated were completed as described below and future actions as follows:

Completed Corrective Actions

1. AREVA provided quarterly reports to the NRC via the DOC for export reports of reactor equipment and components for calendar years 2009 through 2015.

Future AREVA Actions

Communications

1. AREVA will submit an article, reviewed by AREVA's General Counsel and Export Control Officer, to be included in the quarterly Nuclear Materials Management and Safeguards Systems (NMMSS) newsletter.
   a. Within 60 calendar days from the date of the CO, AREVA will submit a draft of the article to the Director, Office of Enforcement, for review and approval.
   b. The article will summarize the existence of NRC import/export requirements, emphasizing the importance of specific and general license requirements under 10 CFR part 110, including the reporting requirements.
   c. The article will also include lessons-learned regarding EA–16–016.
   d. Within 15 calendar days of the NRC's receipt of the draft article submitted by AREVA, the NRC will provide its comments, if any, to AREVA and approve the article.
   e. AREVA will incorporate any NRC comments into the article.
   f. The NRC will publish the article in the next quarterly newsletter.
2. AREVA will conduct a presentation, as outlined below, at the NMMSS Annual Users Conference to be held in May 2017.
   a. At least 30 calendar days prior to the conference, AREVA will submit its draft presentation to the NRC.
   b. The presentation will summarize the existence of NRC import/export requirements, emphasizing the importance of specific and general license requirements under 10 CFR part 110, including the reporting requirements.
   c. The presentation will also include lessons-learned regarding EA–16–016.
   d. Within 15 calendar days of the NRC's receipt of the draft presentation submitted by AREVA, the NRC will provide its comments, if any, to AREVA and approve the presentation.
   e. AREVA will incorporate any NRC comments into the presentation.
3. By the end of calendar year 2016, AREVA will offer to discuss and exchange views on the lessons-learned regarding EA–16–016 with Westinghouse Electric Company, General Electric-Hitachi, and Urenco USA, during a conference

call or a meeting. Significant observations from the discussions should be incorporated into the presentation outlined in paragraph 2 above.

Work Processes

4. Within 12 months, AREVA will develop and/or update written procedures related to NRC requirements contained in 10 CFR parts 75 and 110. These written procedures will include a corporate focus and apply to all AREVA facilities.

Training

5. Within 60 calendar days, AREVA will conduct training with management and staff responsible for the import/export activities within AREVA to outline the requirements contained in 10 CFR parts 75 and 110, and to emphasize and reinforce NRC compliance expectations. AREVA will maintain documentation of management and staff that attended such training.
6. AREVA will provide annual refresher training for management and staff responsible for the import/export activities including training on any developed or updated written procedures referred to in paragraph 4. AREVA will maintain documentation of management and staff that attended such training.
7. AREVA will provide initial training for new management and staff responsible for import/export activities, including training on any developed or updated written procedures referred to in paragraph 4. AREVA will maintain documentation of management and staff that attended such training.

Audits

8. No later than 60 calendar days following the development of the procedures described in paragraph 4, AREVA will engage an independent third-party consultant to conduct a review and provide a written assessment of AREVA's written import/export compliance program and training activities. Within 30 calendar days of the receipt of the final audit report, AREVA will share the consultant's written assessment, which may include recommendations or suggestions for improvement, with the NRC. The consultant will possess NRC regulatory experience. AREVA's submission of the first audit report to the NRC shall in no event be later than 2 years from the issuance of the CO.
9. Following the initial audit, the audits will continue on an annual basis. Within 30 calendar days of the receipt of the annual audit report, AREVA will share the consultant's written assessment, which may include recommendations or suggestions for improvement, with the NRC. After the third annual audit, upon request by AREVA and a showing of good cause, the Director, Office of Enforcement, shall rescind the audit requirements.

AREVA Annual Report

10. Concurrently with the submission of the initial audit report discussed in paragraph 8 and annually thereafter, AREVA will submit to the Director, Office of Enforcement, an annual letter confirming its compliance with the CO and providing relevant details demonstrating such compliance. After the fourth submission of the compliance letter, upon request by AREVA and a showing of good cause, the Director, Office of Enforcement, shall rescind the compliance letter requirement.

Safety Culture

11. Within 60 calendar days of issuance of the CO, AREVA will provide to the Director, Office of Enforcement, AREVA's written policies, procedures, and other information relating to AREVA's safety culture including, but not limited to, safety conscious work environment, employee concerns, and its corrective action program for NRC review and comment.

General

12. The NRC agrees not to pursue further enforcement action in connection with its April 21, 2016, letter to AREVA.
13. In consideration of the commitments above, the NRC agrees to refrain from imposing a civil penalty or issuing a Notice of Violation.
14. The CO will constitute an escalated enforcement action.
15. Additionally, the CO resulting from this ADR will correct and document incorrect information in the NRC's April 21, 2016, letter to AREVA.
16. AREVA's successor in interest will be bound by the terms and conditions set forth in the CO.
17. Unless otherwise specified, all dates are from the date of issuance of the CO.
18. Unless otherwise specified, all documents required to be submitted to the NRC will be sent to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2783, with a copy to the Director, Office of International Programs, NRC.

On July 29, 2016, AREVA consented to issuing this Order with the commitments, as described in Section V below (ADAMS Accession No. ML16176A139). AREVA further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Because AREVA has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this CO.

I find that AREVA's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that AREVA's commitments be confirmed by this Order. Based on the above and AREVA's consent, this CO is effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 110, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT AREVA COMPLETE THE FOLLOWING ACTIONS:

Communications

1. AREVA will submit an article, reviewed by AREVA's General Counsel and Export Control Officer, to be included in the quarterly NMMSS newsletter.
   a. Within 60 calendar days from the date of the CO, AREVA will submit a draft of the article to the Director, Office of Enforcement, for review and approval.
   b. The article will summarize the existence of NRC import/export requirements, emphasizing the importance of specific and general license requirements under 10 CFR part 110, including the reporting requirements.
   c. The article will also include lessons-learned regarding EA–16–016.
   d. Within 15 calendar days of the NRC's receipt of the draft article submitted by AREVA, the NRC will provide its comments, if any, to

AREVA and approve the article.

e. AREVA will incorporate any NRC comments into the article.

f. The NRC will publish the article in the next quarterly newsletter.

2. AREVA will conduct a presentation, as outlined below, at the NMMSS Annual Users Conference to be held in May 2017.

a. At least 30 calendar days prior to the conference, AREVA will submit its draft presentation to the NRC.

b. The presentation will summarize the existence of NRC import/export requirements, emphasizing the importance of specific and general license requirements under 10 CFR part 110, including the reporting requirements.

c. The presentation will also include lessons-learned regarding EA–16–016.

d. Within 15 calendar days of the NRC's receipt of the draft presentation submitted by AREVA, the NRC will provide its comments, if any, to AREVA and approve the presentation.

e. AREVA will incorporate any NRC comments into the presentation.

3. By the end of calendar year 2016, AREVA will offer to discuss and exchange views on the lessons-learned regarding EA–16–016 with Westinghouse Electric Company, General Electric-Hitachi, and Urenco USA, during a conference call or a meeting. Significant observations from the discussions should be incorporated into the presentation outlined in paragraph 2 above.

Work Processes

4. Within 12 months, AREVA will develop and/or update written procedures related to NRC requirements contained in 10 CFR parts 75 and 110. These written procedures will include a corporate focus and apply to all AREVA facilities.

Training

5. Within 60 calendar days, AREVA will conduct training with management and staff responsible for the import/export activities within AREVA to outline the requirements contained in 10 CFR parts 75 and 110, and to emphasize and reinforce NRC compliance expectations. AREVA will maintain documentation of management and staff that attended such training.

6. AREVA will provide annual refresher training for management and staff responsible for the import/export activities including training on any developed or updated written procedures referred to in paragraph 4. AREVA will maintain documentation of management and staff that attended such training.

7. AREVA will provide initial training for new management and staff responsible for the import/export activities including training on any developed or updated written procedures referred to in paragraph 4. AREVA will maintain documentation of management and staff that attended such training.

Audits

8. No later than 60 calendar days following the development of the procedures described in paragraph 4, AREVA will engage an independent third-party consultant to conduct a review and provide a written assessment of AREVA's written import/export compliance program and training activities. Within 30 calendar days of the receipt of the final audit report, AREVA will share the consultant's written assessment, which may include recommendations or suggestions for improvement, with the NRC. The consultant will possess NRC regulatory experience. AREVA's submission of the first audit report to the NRC shall in no event be later than 2 years from the issuance of the CO.

9. Following the initial audit, the audits will continue on an annual basis. Within 30 calendar days of the receipt of the annual audit report, AREVA will share the consultant's written assessment, which may include recommendations or suggestions for improvement, with the NRC. After the third annual audit, upon request by AREVA and a showing of good cause, the Director, Office of Enforcement shall rescind the audit requirements.

AREVA Annual Report

10. Concurrently with the submission of the initial audit report discussed in paragraph 8 and annually thereafter, AREVA will submit to the Director, Office of Enforcement, an annual letter confirming its compliance with the CO and providing relevant details demonstrating such compliance. After the fourth submission of the compliance letter, upon request by AREVA and a showing of good cause, the Director, OE shall rescind the compliance letter requirement.

Safety Culture

11. Within 60 calendar days of issuance of the CO, AREVA will provide to the Director, Office of Enforcement, AREVA's written policies, procedures, and other information relating to AREVA's safety culture including, but not limited to, safety conscious work environment, employee concerns, and its corrective action program for NRC review and comment.

In the event of the transfer of ownership of AREVA to another entity, the terms and conditions set forth hereunder shall continue to apply to the new entity and accordingly survive any transfer of ownership.

Unless otherwise specified, all dates are from the date of issuance of the CO.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by AREVA of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this CO, other than AREVA, may request a hearing within 30 calendar days of the date of issuance of this CO. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE System. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than AREVA) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this CO and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this CO should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this CO without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 4th day of August 2016.

For the Nuclear Regulatory Commission,

Patricia K. Holahan,

Director Office of Enforcement.

[FR Doc. 2016–19105 Filed 8–10–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Chang-On International, Inc., Computer Graphics International Inc., Guanwei Recycling Corp., John D. Oil and Gas Company, Legal Life Plans, Inc., Powder River Coal Corp., Reunion Industries, Inc., ThermoEnergy Corporation; Order of Suspension of Trading

August 9, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the termination of the auditor of Chang-On International, Inc. (China) because it has not filed any periodic reports since the period ended June 30, 2014. Its stock is quoted on OTC Link (previously "Pink Sheets"), operated by OTC Markets Group Inc. ("OTC Link"), under the ticker symbol CAON.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the termination of the auditor of Computer Graphics International Inc. (China) because it has not filed any periodic reports since the period ended December 31, 2013. Its stock is quoted on OTC Link under the ticker symbol CGII.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the termination of the auditor of Guanwei Recycling Corp. (China) because it has not filed any periodic reports since the period ended March 31, 2014. Its stock is quoted on OTC Link under the ticker symbol GPRC.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the termination of the auditor of John D. Oil and Gas Company (Ohio) because it has not filed any periodic reports since the period ended December 31, 2011. Its stock is quoted on OTC Link under the ticker symbol JDOGQ.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the termination of the auditor of Legal Life Plans, Inc. (Tennessee) because it has not filed any periodic reports since the period ended August 31, 2013. Its stock is quoted on OTC Link under the ticker symbol LLFP.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the termination of the auditor of Powder River Coal Corp. (Wyoming) because it has not filed any periodic reports since the period ended September 30, 2013. Its stock is quoted on OTC Link under the ticker symbol POWD.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the termination of the auditor of Reunion Industries, Inc. (Pennsylvania) because it has not filed any periodic reports since the period ended September 30, 2007. Its stock is quoted on OTC Link under the ticker symbol RUNI.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the termination of the auditor of ThermoEnergy Corporation (Massachusetts) because it has not filed any periodic reports since the period ended March 31, 2014. Its stock is quoted on OTC Link under the ticker symbol TMEN.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 9, 2016, through 11:59 p.m. EDT on August 22, 2016.

By the Commission.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2016–19209 Filed 8–9–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78482; File No. SR–IEX–2016–06]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.270(c) Concerning Clearly Erroneous Executions

August 5, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 28, 2016, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC ("IEX" or "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to correct the chart in Rule 11.270(c), which sets forth the numerical guidelines for determining if a transaction that is the subject of a complaint shall be found to be clearly erroneous, to specify such guidelines for leveraged exchange traded funds ("ETF") and exchange traded notes ("ETN"). The Exchange has designated this rule change as "non-controversial" under Section 19(b)(3)(A) of the Act[6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [sic] may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CRF 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to correct the chart in Rule 11.270(c), which sets forth the numerical guidelines for determining if a transaction that is the subject of a complaint shall be found to be clearly erroneous, to specify such guidelines for leveraged ETFs and ETNs. Due to an oversight, the last line of the chart, entitled "Leveraged ETF/ETN" does not contain all necessary language with respect to the applicable numerical guidelines. Accordingly, IEX proposes to amend the chart so that the last line provides that the numerical guidelines during regular market hours, as well as the Pre-Market Session and Post-Market Session, shall be the "Regular Market Hours Numerical Guidelines multiplied by the leverage multiplier (*i.e.*, 2x)."

The Exchange notes that Rule 11.270 is substantially identical to Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") Rule 11.17, which in turn is substantially identical to corresponding rules of the other U.S. securities exchanges that trade equities securities and of the Financial Industry Regulatory Authority, Inc. ("FINRA").[8] Accordingly, the Exchange believes that it is appropriate to amend Rule 11.270(c) to correct the chart contained therein.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)[9] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes it is appropriate to make the correction to the chart in Rule 11.270(c) so that the correct guideline is used in its rules. Additionally, the correction will create consistency with the rules of other equities exchanges and eliminate confusion in its rules. In this regard, FINRA and the equities exchanges have adopted substantially identical rules relating to clearly erroneous transactions to provide consistency in the handling of such transactions. As noted above, the proposed correction will assure that Rule 11.270 is substantially identical to, and consistent with, the rules relating to clearly erroneous transactions of FINRA and the other equities exchanges.[11] The Exchange believes that it is appropriate to make the specified correction to alleviate any confusion among market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition because IEX is merely correcting its rule to correct an inadvertent omission of necessary text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6)[13] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[14] The Exchange notes that its proposal corrects an inadvertent omission and has asked the Commission to waive the 30-day operative delay, making this proposal operative upon filing. As noted above, IEX's proposal adds rule text to IEX Rule 11.270(c) that IEX inadvertently omitted, which conforms IEX's rule to the substantially identical BZX rule. As this proposal will correct the error in IEX's rule, it should alleviate any potential confusion among market participants. For this reason, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest and waiver will allow IEX to update its rule without undue delay. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–IEX–2016–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2016–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

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[8] *See, e.g.*, BZX Rule 11.17.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 8 and accompanying text.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6), respectively. In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2016–06, and should be submitted on or before September 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–19052 Filed 8–10–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78483; File No. SR–NYSEMKT–2016–68]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change, Rule Change, as Modified by Amendment No. 1, Amending NYSE Rule 49—Equities Regarding: (1) The Exchange's Emergency Powers; (2) the Exchange's Disaster Recovery Plans; and (3) Exchange Backup Systems and Mandatory Testing

August 5, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 29, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 49—Equities (Emergency Powers) by (1) replacing the text of current Rule 49—Equities with the Exchange's proposed disaster recovery plans; and (2) moving the text of current Rule 431 (Exchange Backup Systems and Mandatory Testing) relating to Exchange member organizations to Rule 49—Equities. This Amendment No. 1 supersedes the original filing in its entirety. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 49—Equities ("Rule 49"), which addresses the Exchange's emergency powers, by (1) replacing the text of current Rule 49 with the Exchange's proposed disaster recovery plans; and (2) moving the text of current Rule 431 (Exchange Backup Systems and Mandatory Testing) relating to Exchange equity member organizations to Rule 49 with no substantive changes. The Exchange further proposes to amend Rules 0—Equities and 431 to specify that Rule 431 would govern Exchange Backup Systems and Mandatory Testing for Exchange ATP Holders only.

The Exchange proposes to amend Rule 49 in two ways. First, the Exchange proposes to replace the current disaster recovery plan, pursuant to which NYSE Arca, Inc. ("NYSE Arca"), the Exchange's affiliate, will act on behalf of and at the direction of the Exchange for auctions and specified regulatory messages in Exchange-listed securities, with a new disaster recovery plan that the Exchange would implement if the Exchange's primary data center is impaired. Under the proposed disaster recovery plan, the Exchange would no longer rely on NYSE Arca to act on its behalf. Rather, the Exchange would operate as a fully electronic exchange under its own trading rules and would maintain its own order book in its disaster recovery facility. In addition, quotes and trades would be published to the securities information processor ("SIP") as quotes and trades of the Exchange. To reflect this change, the Exchange proposes to delete Rule 49 (Emergency Powers) in its entirety and replace it with new proposed Rule 49(a).[4]

Second, the Exchange proposes to move text from Rule 431 governing Exchange Backup Systems and Mandatory Testing relating to equity member organizations, to proposed Rule 49(b)(N) with only non-substantive changes to update sub-paragraph numbering and cross references. Because Rule 431 relates to mandatory testing of the Exchange's disaster recovery facility, as required by Rule 1004 of Regulation SCI,[5] the Exchange believes that moving the rule text from Rule 431 to Rule 49 for its equity member organizations would make the Exchange's rules easier to navigate by consolidating equity rules with a common theme into a single rule. To incorporate that proposed Rule 49 would also cover mandatory testing requirements for its equity member organizations, the Exchange also proposes to change the title of Rule 49 to "Exchange Business Continuity and

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Because the Exchange would not implement proposed Rule 49(a) until after an opportunity to test it with Exchange member organizations, the Exchange proposes to retain current Rule 49 on its books and not delete it until after proposed Rule 49(a) is approved. The Exchange also proposes to file a separate proposed rule change to establish the operative date of paragraph (a) of proposed Rule 49 and delete the current version of the rule. To reduce the potential for any confusion regarding which version of the rule governs, the Exchange proposes to add the following preamble to current Rule 49: "This version of Rule 49—equities will remain operative until the proposed rule changes described in SR–NYSEMKT–2016–68 are approved and the Exchange files a separate proposed rule change to delete this version of Rule 49—Equities and preamble and to establish the operative date of paragraph (a) of 'Rule 49—Equities. Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing.' Subject to such separate proposed rule change, the Exchange will announce via Trader Update the operative date of the deletion of this Rule and implementation of paragraph (a) of Rule 49—Equities. Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing." The Exchange also proposes to add a preamble to proposed Rule 49, which would provide: "The Exchange will file a separate proposed rule change to establish the operative date of paragraph (a) of this version of Rule 49—Equities and to delete 'Rule 49—Equities. Emergency Powers' and this preamble. Until such time, 'Rule 49—Equities. Emergency Powers' will remain operative. Subject to such separate proposed rule change, the Exchange will announce via Trader Update the operative date of paragraph (a) of this Rule and deletion of 'Rule 49—Equities. Emergency Powers.'"

[5] 17 CFR 242.1004.

Disaster Recovery Plans and Mandatory Testing."

Because Rule 431 would pertain only to options trading, the Exchange proposes to amend that rule to delete references to the terms "member," "member organization," and "designated market maker" and use the term "ATP Holder" instead. The Exchange also proposes to amend Rule 0—Equities to remove the reference to Rule 431 as being applicable to equities trading.

Background

In 2012, the Exchange adopted Rule 49 to provide the Exchange with the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange and to act as necessary in the public interest and for the protection of investors.[6] The authority in Rule 49 may be exercised when, due to an Emergency Condition,[7] the Exchange's systems and facilities located at 11 Wall Street, New York, New York, including the Trading Floor, cannot be utilized, or if the Exchange's primary data center is impaired. If such an Emergency Condition is declared, a qualified Exchange officer may designate NYSE Arca to serve as a backup facility so that the Exchange, as a self-regulatory organization ("SRO"), can remain operational.[8] NYSE Arca also would continue to operate simultaneously.[9] In September 2014, the Exchange further amended Rule 49 to revise how certain messages are disseminated.[10]

Under Rule 49, if the Exchange declares an Emergency Condition, the Exchange will halt all trading on the Exchange's systems and facilities and purge any unexecuted orders from the Exchange's own systems and facilities as soon as practicable following declaration of the Emergency Condition.[11] Beginning the next trading day, NYSE Arca, on behalf of and at the direction of the Exchange, will disseminate the official opening, re-opening, and closing trades of Exchange-listed securities to the Consolidated Tape as message of the Exchange, and any notification for Exchange listed securities to the Consolidated Quotation System of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter, as messages of the Exchange.[12]

In addition, bids and offers for Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition will be reported to the Consolidated Quotation system as bids and offers of NYSE Arca, except that the opening quote will be reported to the Consolidated Quotation System as a bid and/or offer of both the Exchange and NYSE Arca and any re-opening quote will be reported to the Consolidated Quotation System as a bid and/or offer of the Exchange only. Bids and offers for Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition will be reported to the Consolidated Tape as executions of NYSE Arca, except for executions in the opening, re-opening, or closing transactions, which will be reported as Exchange executions and Exchange volume only.[13] Because intra-day quotes and trades in Exchange-listed securities would be reported to the SIP as quotes and trades of NYSE Arca (except for the opening, reopening and closing trades), this disaster recovery plan is referred to the "Print as P" plan.

Since adopting Rule 49, the Exchange has amended its rules to provide for Exchange-facilitated procedures for opening and closing securities if either a Designated Market Maker ("DMM") or the Exchange's 11 Wall Street facilities are unavailable.[14] Because the Exchange can now operate even in the absence of 11 Wall Street facilities, and because the Exchange's Print as P disaster recovery plan is available in the exchange's secondary data center, Rule 49 would be invoked only if an Emergency Condition impacted the Exchange's primary data center. To date, the Exchange has not invoked Rule 49.

Proposed Rule Change

Proposed Rule 49(a) would govern the Exchange's Disaster Recovery Facility. As proposed, Rule 49(a)(1) would provide that, as part of its business continuity and disaster recovery plans, the Exchange maintains a "Disaster Recovery Facility," which is a secondary data center located in a geographically diverse location, as required by Regulation SCI.[15] This proposed rule text is intended to be definitional, and describes that the Exchange maintains a secondary data center.

Proposed Rule 49(a)(2) would specify the procedures that the Exchange would follow if the Exchange determines under Rule 51—Equities ("Rule 51") to trade Exchange-traded securities on its Disaster Recovery Facility. Currently, Rule 49(a)(1) provides that a qualified Exchange officer shall have the authority to declare an Emergency Condition and current Rule 49(a)(3)(B) defines the term "qualified Exchange officer" to mean the ICE Chief Executive Officer or his or her designee, or the Chief Regulatory Officer of the Exchange or his or her designee. The rule further provides that in the event that none of these individuals is able to act due to incapacitation, the most senior surviving officer of ICE or the Exchange shall be a "qualified Exchange officer" for purposes of Rule 49.

Rather than specifying separately in Rule 49 who can act under that rule, the Exchange proposes to include in Rule

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[6] *See* Securities Exchange Act Release No. 70822 (November 6, 2013), 78 FR 68128 (November 13, 2013) (SR–NYSEMKT–2013–66) ("2013 Approval Order"). At the same time, NYSE Arca amended NYSE Arca Equities Rule 2.100 to provide that NYSE Arca Equities would receive and process bids and offers in Exchange-listed securities on behalf of the Exchange. *See id.* (SR–NYSEArca–2013–77).

[7] Under current Rule 49, an "Emergency Condition" means an emergency as defined in Section 12(k)(7) of the Act, which is "(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions." 15 U.S.C. 78l(k)(7).

[8] NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the "NYSE Arca Marketplace." For the purposes of this filing and in the text of Rule 49, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

[9] The Exchange's affiliate, New York Stock Exchange LLC ("NYSE"), originally adopted a version of NYSE Rule 49 under which quotes and trades of NYSE-listed securities would continue to be reported to the SIP as quotes and trades of the NYSE. That plan was referred to as the "Print as N" plan. NYSE MKT did not have a corollary "Print as A" plan. When the NYSE amended its NYSE Rule 49 in 2013 and 2014, the Exchange adopted an identical version of that rule as Rule 49. *See* 2013 Approval Order, *supra* note 5 (SR–NYSE–2013–54).

[10] *See* Securities Exchange Act Release No. 73029 (Sept. 9, 2014), 79 FR 55061 (Sept. 15, 2014) (SR–NYSEMKT–2014–75) ("2014 Approval Order").

[11] *See* Rule 49(b)(1).

[12] *See* Rule 49(b)(2)(A)(i) and (ii).

[13] *See* Rule 49(2)(B).

[14] *See* Rules 123D(a)(2)–(6)—Equities (describing process for the Exchange to facilitate the open and reopen of trading) and Supplementary Material .10 to Rule 123C—Equities (describing process for the Exchange to facilitate the close of trading).

[15] *See* 17 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continuity and disaster recovery plans that including maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption).

51 the authority to determine whether to use the Exchange's Disaster Recovery Facility. Rule 51(b) currently provides that, except as may be otherwise determined by the Exchange Board of Directors, the Chief Executive Officer ("CEO") of the Exchange shall have the power to: (i) Halt or suspend trading in some or all securities trading on the Exchange; (ii) extend the hours for the transaction of business on the Exchange; (iii) close some or all Exchange facilities; or (iv) determine the duration of any halt, suspension or closing undertaken under this Rule. Rule 51(c) specifies the circumstances under which the CEO may take these actions, which includes a loss or interruption of facilities utilized by the Exchange.[16]

The Exchange believes that the authority to determine to trade Exchange-traded securities in its Disaster Recovery Facility should similarly be vested with the CEO of the Exchange. Specifically, the CEO may already take the above-specified actions under Rule 51(b) if there is a loss or interruption of facilities utilized by the Exchange. The Exchange believes that a loss or interruption of the Exchange's primary data center is an event contemplated in Rule 51(c), and therefore the authority to take an action based on that event, whether suspending trading or determining to use the Disaster Recovery Facility, should be determined by the same person. Accordingly, the Exchange proposes to add proposed Rule 51(b)(v) to specify that the CEO of the Exchange may determine to trade securities on the Exchange's Disaster Recovery Facility pursuant to Rule 49.[17]

The Exchange also proposes non-substantive amendments to Rule 51(b) to provide that the CEO "may take any of the following actions" rather than to provide that the CEO "shall have the power to." The Exchange believes the proposed amendment makes clear that the CEO may invoke one or more of the actions specified in Rule 51(b)(i)–(v). For the same reason, the Exchange proposes to make a conforming amendment to Rule 51(c) to specify that the CEO shall take *any of* the actions described in paragraph (b) above.

The Exchange proposes that the following would apply if the Exchange determines under Rule 51 to trade Exchange-traded securities on its Disaster Recovery Facility:

- Proposed Rule 49(a)(2)(A) would provide that the 11 Wall Street facilities would not be available for trading if the Exchange is operating from its Disaster Recovery Facility. Because the trading systems in the Exchange's Disaster Recovery Facility would not have connectivity to DMM and Floor broker trading systems, the Exchange would operate as a fully electronic exchange when operating out of its Disaster Recovery Facility, even if 11 Wall Street facilities were not impacted.
- Proposed Rule 49(a)(2)(B) would provide that opening and reopening auctions would be subject to Rule 123D(a)(2)–(6)—Equities and closing auctions would be subject to Supplementary Material .10 to Rule 123C—Equities. Because there would be no Trading Floor or DMM connectivity, the Exchange proposes that, when operating out of its Disaster Recovery Facility, the Exchange would facilitate all openings, reopenings, and closings, as provided for in the enumerated rules. As noted above, this is the Exchange's current business continuity plan if the 11 Wall Street facilities were unavailable, but the Exchange could continue to operate out of its primary data center.
- Proposed Rule 49(a)(2)(C) would provide that any unexecuted orders entered into Exchange systems before trading on the Disaster Recovery Facility begins would be deemed cancelled and would be purged from Exchange systems. This proposed rule text is based on current Rule 49(b)(1)(B), which provides that when an Emergency Condition is declared, the Exchange will purge any unexecuted orders from the Exchange's own systems and facilities as soon as practicable following declaration of the Emergency Condition. The Exchange proposes to modify this text in proposed Rule 49(a)(2)(C) to make clear that any unexecuted orders entered into Exchange systems before trading on the Disaster Recovery Facility begins would be deemed cancelled because depending on the scope of the disruption, the Exchange may not be able to transmit cancellation messages for unexecuted orders.
- Proposed Rule 49(a)(2)(D) would provide that member organizations registered as DMMs would not be subject to any DMM obligations or benefits under Exchange rules while securities trade on the Disaster Recovery Facility.[18] DMMs would not be subject to any such obligations or benefits because the Exchange will not maintain systems that support DMM quoting at its Disaster Recovery Facility. DMMs that route orders to the Disaster Recovery Facility would trade no differently than other market participants that electronically enter orders at the Exchange, and would be subject to the fees and credits applicable to non-DMM transactions.

Proposed Rule 49(a)(3) would provide that member organizations wishing to trade on the Exchange's Disaster Recovery Facility would be responsible for having contingency plans for establishing connectivity to such facility and changing routing instructions for their order entry systems to send bids and offers in Exchange-traded securities to such facility. This proposed rule text is based on current Rule 49(b)(3), but references connectivity to the Exchange's Disaster Recovery Facility rather than connectivity to NYSE Arca.

As noted above, because the Exchange would no longer be designating NYSE Arca to act on behalf of and at the direction of the Exchange, the Exchange would not include the provisions of current Rule 49(a)(1) and (b) relating to such designation. The Exchange further proposes that the term "Emergency Condition" and related definition, described in current Rule 49(a)(1), (2), and (3)(A), would not be included in proposed Rule 49 because this language has been superseded by Regulation SCI Rule 1001(a)(2)(v).[19] Likewise, the Exchange would not retain the current Rule 49(c)(2) requirement that the ability to invoke Rule 49(a) would be operative for only a ten-day period. The Exchange believes that, in the event of a wide-scale disruption, ten days may not be enough time.

In addition, the Exchange is not proposing to include the subject of current Rule 49(b)(2)(A) and (B) in proposed Rule 49. In the Exchange's proposed Disaster Recovery Facility, the Exchange would be reporting all quotes and trades to the SIP as quotes and trades of the Exchange. In addition, the Exchange would be disseminating regulatory messages for its listed securities, including notifications of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter. Accordingly, NYSE Arca would not be disseminating this information on behalf of the Exchange in the event it determines to trade Exchange-traded securities on its Disaster Recovery Facility.

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[16] *See* Rule 51(c)(1).

[17] Under Rule 1—Equities, the CEO may formally designate one or more qualified employees of Intercontinental Exchange Group, Inc. to act in place of any person named in a rule as having authority to act under such rule in the event that the named person in the rule is not available to administer that rule. Because Rule 1—Equities already provides the authority to designated alternate qualified employees, the Exchange would not include rule text from current Rule 49(a)(3)(B) regarding who may be designated to act in proposed Rule 51 in the absence of the CEO.

[18] *See, e.g.,* Rules 103B(I)—Equities (quoting requirements for allocation process of listed securities) and 104—Equities (Dealings and Responsibilities of DMMs).

[19] *See* 17 CFR 242.1001(a)(2)(v).

Finally, the Exchange does not propose to retain the language in current Rule 49(c)(1), regarding notification requirements to the Commission as these have also been superseded by the notification requirements in Regulation SCI.[20] Accordingly, current Rule 49(c)(1) is obsolete and does not need to be included in proposed Rule 49(a).

As discussed above, proposed Rule 49(b)(N) would include all the text of current Rule 431, with non-substantive differences to update sub-paragraph numbering and rule paragraph cross references and to reference member organizations. The Exchange proposes to designate this paragraph of proposed Rule 49(b)(N) with an "N" to distinguish it from current Rule 49(b), as both would be operative at the same time.

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As discussed above in footnote 3, paragraph (a) of proposed Rule 49 would not be operative until the Exchange has an opportunity to test it with Exchange member organizations. The Exchange does not anticipate that the DR Facility will be available for testing in production until late in the fourth quarter of 2016. The Exchange will file a separate proposed rule change to establish the operative date of paragraph (a) of proposed Rule 49, delete current "Rule 49—Equities. Emergency Powers," delete the preamble to proposed Rule 49, and delete the "N" designation to proposed Rule 49(b). The operative date established in such separate proposed rule change will also be announced via Trader Update. The proposed changes to Rule 49(b)(N), 51, and Rule 431 will be operative on approval of this proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will assist in facilitating trading in Exchange-traded securities in the event the Exchange experiences a disruption in its primary data center. Accordingly, the proposed rule change is designed to protect investors and the public interest by providing for minimal interruption of Exchange trading if the Exchange experiences a wide-scale disruption. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by providing for a business continuity and disaster recovery plan that includes maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that is reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical Exchange systems following a wide-scale disruption, as required by Regulation SCI.[23] Moreover, the Exchange believes that the proposed rule change would strengthen business continuity planning for itself and its member organizations, thereby benefiting market participants and investors generally.

More specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because under the proposed disaster recovery plan, the Exchange would maintain its own facility within the Disaster Recovery Facility that would disseminate to the SIP all quote and trade information, including opening, reopening, and closing auction information and intra-day quotes and trades, as well as regulatory messages, as Exchange messages.

The Exchange further believes that the proposed rule change to vest the authority to determine to trade securities on the Exchange's Disaster Recovery Facility pursuant to Rule 49 with the CEO, as provided for in proposed Rule 51(b)(v), would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would consolidate in a single rule the individual with authority to take specified actions. This proposed rule change would also streamline the Exchange's rules and procedures by providing for consistent authority of who may act when there is a loss or interruption of facilities utilized by the Exchange.

The Exchange also believes that, because the Exchange is now subject to the requirements of Regulation SCI, certain elements of current Rule 49 have been superseded, and therefore it would remove impediments to and perfect the mechanism of a free and open market and a national market system for proposed Rule 49(a) not to include specified provisions of the current rule. Specifically, the Exchange does not believe that proposed Rule 49(a) needs to be limited to what is currently defined as an "Emergency Condition" or be invoked for only ten days because the proposed rule would be invoked as part of a robust business continuity and disaster recovery plan in the event of a wide-scale disruption, as required by Rule 1001(a)(2)(v) of Regulation SCI.[24] For similar reasons, the Exchange does not believe that proposed Rule 49 needs separate provisions specifying notice requirements to the Commission because these are now required by Rule 1002(b) of Regulation SCI.[25]

Finally, the Exchange believes that moving the text of current Rule 431 relating to equity member organizations to proposed Rule 49(b)(N), amending Rule 431 to pertain only to ATP Holders, and renaming Rule 49 as "Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing," would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would consolidate into a single rule related content, *i.e.*, the Exchange's proposed equity disaster recovery plan and mandatory testing requirements related to such plan. Thus, the proposed rule change would make the Exchange's rules easier to navigate for Exchange equity members, the Commission, and the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Exchange-listed securities on its Disaster Recovery Facility. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally because it provides transparency in terms of which rules would govern trading in Exchange-traded securities if they trade on the Exchange's Disaster Recovery Facility.

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[20] 17 CFR 242.1002(b)(1).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* note 4.

[24] 17 CFR 242.1001(a)(2)(v).

[25] 17 CFR 242.1002(b).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–68. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–68, and should be submitted on or before September 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–19053 Filed 8–10–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78484; File No. SR–NYSE–2016–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending NYSE Rule 49 Regarding: (1) The Exchange's Emergency Powers; (2) the Exchange's Disaster Recovery Plans; and (3) Exchange Backup Systems and Mandatory Testing

August 5, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 29, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 49 (Emergency Powers) by (1) replacing the text of current Rule 49 with the Exchange's proposed disaster recovery plans; and (2) moving the text of current Rule 438 (Exchange Backup Systems and Mandatory Testing) to Rule 49. This Amendment No. 1 supersedes the original filing in its entirety. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 49, which addresses the Exchange's emergency powers, by (1) replacing the text of current Rule 49 with the Exchange's proposed disaster recovery plans; and (2) moving the text of current Rule 438 (Exchange Backup Systems and Mandatory Testing) to Rule 49 with no substantive changes.

The Exchange proposes to amend Rule 49 in two ways. First, the Exchange proposes to replace the current disaster recovery plan, pursuant to which NYSE Arca, Inc. ("NYSE Arca"), the Exchange's affiliate, acts on behalf of and at the direction of the Exchange for auctions and specified regulatory messages in Exchange-listed securities, with a new disaster recovery plan that the Exchange would implement if the Exchange's primary data center is impaired. Under the proposed disaster recovery plan, the Exchange would no longer rely on NYSE Arca to act on its behalf. Rather, the Exchange would operate as a fully electronic exchange under its own trading rules and would maintain its own order book in its disaster recovery facility. In addition, quotes and trades would be published to the securities information processor ("SIP") as quotes and trades of the Exchange. To reflect this change, the Exchange proposes to delete Rule 49 (Emergency Powers) in its entirety and replace it with new proposed Rule 49(a).[4]

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[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Second, the Exchange proposes to move text from Rule 438 governing Exchange Backup Systems and Mandatory Testing, to proposed Rule 49(b)(N) with only non-substantive changes to update sub-paragraph numbering and cross references. Because Rule 438 relates to mandatory testing of the Exchange's disaster recovery facility, as required by Rule 1004 of Regulation SCI,[5] the Exchange believes that moving the rule text from Rule 438 to Rule 49 would make the Exchange's rules easier to navigate by consolidating rules with a common theme into a single rule. To incorporate that proposed Rule 49 would also cover mandatory testing requirements, the Exchange also proposes to change the title of Rule 49 to "Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing."

Background

In 2009, the Exchange adopted Rule 49 to provide the Exchange with the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange and to act as necessary in the public interest and for the protection of investors.[6] The authority in Rule 49 may be exercised when, due to an Emergency Condition,[7] the Exchange's systems and facilities located at 11 Wall Street, New York, New York, including the NYSE Trading Floor, cannot be utilized, or if the Exchange's primary data center is impaired. If such an Emergency Condition is declared, a qualified Exchange officer may designate NYSE Arca to serve as a backup facility so that the Exchange, as a self-regulatory organization ("SRO"), can remain operational.[8] NYSE Arca also would continue to operate simultaneously. Because under the original version of Rule 49, quotes and trades of Exchange-listed securities would continue to be reported to the SIP as quotes and trades of the Exchange, this disaster recovery plan was referred to as the "Print as N" plan.

In November 2013, the Securities and Exchange Commission ("Commission") approved amendments to Rule 49 that were designed to more effectively delineate the SRO functions of the Exchange and NYSE Arca during an Emergency Condition, reflect the operational preferences of the industry, and reflect the structure of member organization connectivity to and system coding for exchange systems.[9] In September 2014, the Exchange further amended Rule 49 to revise how certain messages are disseminated.[10]

Under current Rule 49, if the Exchange declares an Emergency Condition, the Exchange will halt all trading on the Exchange's systems and facilities and purge any unexecuted orders from the Exchange's own systems and facilities as soon as practicable following declaration of the Emergency Condition.[11] Beginning the next trading day, NYSE Arca, on behalf of and at the direction of the Exchange, will disseminate the official opening, re-opening, and closing trades of Exchange-listed securities to the Consolidated Tape as message of the Exchange, and any notification for Exchange listed securities to the Consolidated Quotation System of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter, as messages of the Exchange.[12]

In addition, bids and offers for Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition will be reported to the Consolidated Quotation system as bids and offers of NYSE Arca, except that the opening quote will be reported to the Consolidated Quotation System as a bid and/or offer of both the Exchange and NYSE Arca and any re-opening quote will be reported to the Consolidated Quotation System as a bid and/or offer of the Exchange only. Bids and offers for Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition will be reported to the Consolidated Tape as executions of NYSE Arca, except for executions in the opening, re-opening, or closing transactions, which will be reported as Exchange executions and Exchange volume only.[13] Because intra-day quotes and trades in Exchange-listed securities would be reported to the SIP as quotes and trades of NYSE Arca (except for the opening, reopening and closing trades), this disaster recovery plan is referred to the "Print as P" plan.

Since adopting Rule 49, the Exchange has amended its rules to provide for Exchange-facilitated procedures for opening and closing securities if either a Designated Market Maker (''DMM'') or the Exchange's 11 Wall Street facilities are unavailable for one or more securities.[14] Because the Exchange can now operate even in the absence of 11 Wall Street facilities, and because the Exchange's Print as P disaster recovery plan is available in the exchange's secondary data center, Rule 49 would be invoked only if an Emergency Condition impacted the Exchange's primary data center. To date, the Exchange has not invoked Rule 49.

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[4] Because the Exchange would not implement proposed Rule 49(a) until after an opportunity to test it with Exchange member organizations, the Exchange proposes to retain current Rule 49 on its books and not delete it until after proposed Rule 49(a) is approved. The Exchange also proposes to file a separate proposed rule change to establish the operative date of paragraph (a) of proposed Rule 49 and delete the current version of the Rule. To reduce the potential for any confusion regarding which version of the rule governs, the Exchange proposes to add the following preamble to current Rule 49: "This version of Rule 49 will remain operative until the proposed rule changes described in SR–NYSE–2016–48 are approved and the Exchange files a separate proposed rule change to delete this version of Rule 49 and preamble and to establish the operative date of paragraph (a) of 'Rule 49. Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing.' Subject to such separate proposed rule change, the Exchange will announce via Trader Update the operative date of the deletion of this Rule and implementation of paragraph (a) of Rule 49. Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing." The Exchange also proposes to add a preamble to proposed Rule 49, which would provide: "The Exchange will file a separate proposed rule change to establish the operative date of paragraph (a) of this version of Rule 49 and to delete 'Rule 49. Emergency Powers' and this preamble. Until such time, 'Rule 49. Emergency Powers' will remain operative. Subject to such separate proposed rule change, the Exchange will announce via Trader Update the operative date of paragraph (a) of this Rule and deletion of 'Rule 49. Emergency Powers.' "

[5] 17 CFR 242.1004.

[6] *See* Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR–NYSE–2009–105) ("2009 Approval Order"). At the same time, NYSE Arca amended NYSE Arca Equities Rule 2.100 to provide that NYSE Arca Equities would receive and process bids and offers in Exchange-listed securities on behalf of the Exchange. *See* Securities Exchange Act Release No. 61178 (Dec. 16, 2009), 74 FR 68434 (Dec. 24, 2009) (SR–NYSEArca–2009–90).

[7] Under current Rule 49, an "Emergency Condition" means an emergency as defined in Section 12(k)(7) of the Act, which is "(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions." 15 U.S.C. 78l(k)(7).

[8] NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the "NYSE Arca Marketplace." For the purposes of this filing and in the text of Rule 49, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

[9] *See* Securities Exchange Act Release No. 70822 (November 6, 2013), 78 FR 68128 (November 13, 2013) (SR–NYSE–2013–54; SR–NYSEMKT–2013–66; SR–NYSEArca–2013–77) ("2013 Approval Order"). This release approved the amendment to Rule 49 as well as amendments to NYSE Arca Rule 2.100 and adoption of NYSE MKT LLC ("NYSE MKT") Rule 49—Equities.

[10] *See* Securities Exchange Act Release No. 73028 (Sept. 9, 2014), 79 FR 55056 (Sept. 15, 2014) (SR–NYSE–2014–48) ("2014 Approval Order").

[11] *See* Rule 49(b)(1).

[12] *See* Rule 49(b)(2)(A)(i) and (ii).

[13] *See* Rule 49(2)(B).

Proposed Rule Change

Proposed Rule 49(a) would govern the Exchange's Disaster Recovery Facility. As proposed, Rule 49(a)(1) would provide that, as part of its business continuity and disaster recovery plans, the Exchange maintains a ''Disaster Recovery Facility,'' which is a secondary data center located in a geographically diverse location, as required by Regulation SCI.[15] This proposed rule text is intended to be definitional, and describes that the Exchange maintains a secondary data center.

Proposed Rule 49(a)(2) would specify the procedures that the Exchange would follow if the Exchange determines under Rule 51 to trade Exchange-traded securities on its Disaster Recovery Facility. Currently, Rule 49(a)(1) provides that a qualified Exchange officer shall have the authority to declare an Emergency Condition and current Rule 49(a)(3)(B) defines the term ''qualified Exchange officer'' to mean the ICE Chief Executive Officer or his or her designee, or the Chief Regulatory Officer of the Exchange or his or her designee. The rule further provides that in the event that none of these individuals is able to act due to incapacitation, the most senior surviving officer of ICE or the Exchange shall be a ''qualified Exchange officer'' for purposes of Rule 49.

Rather than specifying separately in Rule 49 who can act under that rule, the Exchange proposes to include in Rule 51 the authority to determine whether to use the Exchange's Disaster Recovery Facility. Rule 51(b) currently provides that, except as may be otherwise determined by the Exchange Board of Directors, the Chief Executive Officer (''CEO'') of the Exchange shall have the power to: (i) Halt or suspend trading in some or all securities trading on the Exchange; (ii) extend the hours for the transaction of business on the Exchange; (iii) close some or all Exchange facilities; or (iv) determine the duration of any halt, suspension or closing undertaken under this Rule. Rule 51(c) specifies the circumstances under which the CEO may take these actions, which includes a loss or interruption of facilities utilized by the Exchange.[16]

The Exchange believes that the authority to determine to trade Exchange-traded securities in its Disaster Recovery Facility should similarly be vested with the CEO of the Exchange. Specifically, the CEO may already take the above-specified actions under Rule 51(b) if there is a loss or interruption of facilities utilized by the Exchange. The Exchange believes that a loss or interruption of the Exchange's primary data center is an event contemplated in Rule 51(c), and therefore the authority to take an action based on that event, whether suspending trading or determining to use the Disaster Recovery Facility, should be determined by the same person. Accordingly, the Exchange proposes to add proposed Rule 51(b)(v) to specify that the CEO of the Exchange may determine to trade securities on the Exchange's Disaster Recovery Facility pursuant to Rule 49.[17]

The Exchange also proposes non-substantive amendments to Rule 51(b) to provide that the CEO ''may take any of the following actions'' rather than to provide that the CEO ''shall have the power to.'' The Exchange believes the proposed amendment makes clear that the CEO may invoke one or more of the actions specified in Rule 51(b)(i)–(v). For the same reason, the Exchange proposes to make a conforming amendment to Rule 51(c) to specify that the CEO shall take *any of* the actions described in paragraph (b) above.

The Exchange proposes that the following would apply if the Exchange determines under Rule 51 to trade Exchange-traded securities on its Disaster Recovery Facility:

- Proposed Rule 49(a)(2)(A) would provide that the 11 Wall Street facilities would not be available for trading if the Exchange is operating from its Disaster Recovery Facility. Because the trading systems in the Exchange's Disaster Recovery Facility would not have connectivity to DMM and Floor broker trading systems, the Exchange would operate as a fully electronic exchange when operating out of its Disaster Recovery Facility, even if 11 Wall Street facilities were not impacted.
- Proposed Rule 49(a)(2)(B) would provide that opening and reopening auctions would be subject to Rule 123D(a)(2)–(6) and closing auctions would be subject to Supplementary Material .10 to Rule 123C. Because there would be no Trading Floor or DMM connectivity, the Exchange proposes that, when operating out of its Disaster Recovery Facility, the Exchange would facilitate all openings, reopenings, and closings, as provided for in the enumerated rules. As noted above, this is the Exchange's current business continuity plan if the 11 Wall Street facilities were unavailable, but the Exchange could continue to operate out of its primary data center.
- Proposed Rule 49(a)(2)(C) would provide that any unexecuted orders entered into Exchange systems before trading on the Disaster Recovery Facility begins would be deemed cancelled and would be purged from Exchange systems. This proposed rule text is based on current Rule 49(b)(1)(B), which provides that when an Emergency Condition is declared, the Exchange will purge any unexecuted orders from the Exchange's own systems and facilities as soon as practicable following declaration of the Emergency Condition. The Exchange proposes to modify this text in proposed Rule 49(a)(2)(C) to make clear that any unexecuted orders entered into Exchange systems before trading on the Disaster Recovery Facility begins would be deemed cancelled because depending on the scope of the disruption, the Exchange may not be able to transmit cancellation messages for unexecuted orders.
- Proposed Rule 49(a)(2)(D) would provide that member organizations registered as DMMs would not be subject to any DMM obligations or benefits under Exchange rules while securities trade on the Disaster Recovery Facility.[18] DMMs would not be subject to any such obligations or benefits

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[14] *See* Rules 123D(a)(2)–(6) (describing process for the Exchange to facilitate the open and reopen of trading) and Supplementary Material .10 to Rule 123C (describing process for the Exchange to facilitate the close of trading).

[15] *See* 17 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continuity and disaster recovery plans that including maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption).

[16] *See* Rule 51(c)(1).

[17] Under Rule 1, the CEO may formally designate one or more qualified employees of Intercontinental Exchange Group, Inc. to act in place of any person named in a rule as having authority to act under such rule in the event that the named person in the rule is not available to administer that rule. Because Rule 1 already provides the authority to designated alternate qualified employees, the Exchange would not include rule text from current Rule 49(a)(3)(B) regarding who may be designated to act in proposed Rule 51 in the absence of the CEO.

[18] *See, e.g.,* Rules 103B(I) (quoting requirements for allocation process of listed securities) and 104 (Dealings and Responsibilities of DMMs).

because the Exchange will not maintain systems that support DMM quoting at its Disaster Recovery Facility. DMMs that route orders to the Disaster Recovery Facility would trade no differently than other market participants that electronically enter orders at the Exchange, and would be subject to the fees and credits applicable to non-DMM transactions.

Proposed Rule 49(a)(3) would provide that member organizations wishing to trade on the Exchange's Disaster Recovery Facility would be responsible for having contingency plans for establishing connectivity to such facility and changing routing instructions for their order entry systems to send bids and offers in Exchange-traded securities to such facility. This proposed rule text is based on current Rule 49(b)(3), but references connectivity to the Exchange's Disaster Recovery Facility rather than connectivity to NYSE Arca.

As noted above, because the Exchange would no longer be designating NYSE Arca to act on behalf of and at the direction of the Exchange, the Exchange would not include the provisions of current Rule 49(a)(1) and (b) relating to such designation. The Exchange further proposes that the term "Emergency Condition" and related definition, described in current Rule 49(a)(1), (2), and (3)(A), would not be included in proposed Rule 49 because this language has been superseded by Regulation SCI Rule 1001(a)(2)(v).[19] Likewise, the Exchange would not retain the current Rule 49(c)(2) requirement that the ability to invoke Rule 49(a) would be operative for only a ten-day period. The Exchange believes that, in the event of a wide-scale disruption, ten days may not be enough time.

In addition, the Exchange is not proposing to include the subject of current Rule 49(b)(2)(A) and (B) in proposed Rule 49. In the Exchange's proposed Disaster Recovery Facility, the Exchange would be reporting all quotes and trades to the SIP as quotes and trades of the Exchange. In addition, the Exchange would be disseminating regulatory messages for its listed securities, including notifications of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter. Accordingly, NYSE Arca would not be disseminating this information on behalf of the Exchange in the event it determines to trade Exchange-traded securities on its Disaster Recovery Facility.

Finally, the Exchange does not propose to retain the language in current Rule 49(c)(1), regarding notification requirements to the Commission as these have also been superseded by the notification requirements in Regulation SCI.[20] Accordingly, current Rule 49(c)(1) is obsolete and does not need to be included in proposed Rule 49(a).

As discussed above, proposed Rule 49(b)(N) would include all the text of current Rule 438, with non-substantive differences to update sub-paragraph numbering and rule paragraph cross references. The Exchange proposes to designate this paragraph of proposed Rule 49(b)(N) with an "N" to distinguish it from current Rule 49(b), as both would be operative at the same time.

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As discussed above in footnote 3, paragraph (a) of proposed Rule 49(a) would not be operative until the Exchange has an opportunity to test it with Exchange member organizations. The Exchange does not anticipate that the DR Facility will be available for testing in production until late in the fourth quarter of 2016. The Exchange will file a separate proposed rule change to establish the operative date of paragraph (a) of proposed Rule 49, delete current "Rule 49. Emergency Powers," delete the preamble to proposed Rule 49, and delete the "N" designation to proposed Rule 49(b). The operative date established in such separate proposed rule change will also be announced via Trader Update. The proposed changes to Rule 49(b)(N), 51, and Rule 438 will be operative on approval of this proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will assist in facilitating trading in Exchange-traded securities in the event the Exchange experiences a disruption in its primary data center. Accordingly, the proposed rule change is designed to protect investors and the public interest by providing for minimal interruption of Exchange trading if the Exchange experiences a wide-scale disruption. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by providing for a business continuity and disaster recovery plan that includes maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that is reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical Exchange systems following a wide-scale disruption, as required by Regulation SCI.[23] Moreover, the Exchange believes that the proposed rule change would strengthen business continuity planning for itself and its member organizations, thereby benefiting market participants and investors generally.

More specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because under the proposed disaster recovery plan, the Exchange would maintain its own facility within the Disaster Recovery Facility that would disseminate to the SIP all quote and trade information, including opening, reopening, and closing auction information and intra-day quotes and trades, as well as regulatory messages, as Exchange messages.

The Exchange further believes that the proposed rule change to vest the authority to determine to trade securities on the Exchange's Disaster Recovery Facility pursuant to Rule 49 with the CEO, as provided for in proposed Rule 51(b)(v), would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would consolidate in a single rule the individual with authority to take specified actions. This proposed rule change would also streamline the Exchange's rules and procedures by providing for consistent authority of who may act when there is a loss or interruption of facilities utilized by the Exchange.

The Exchange also believes that, because the Exchange is now subject to the requirements of Regulation SCI, certain elements of current Rule 49 have been superseded, and therefore it would remove impediments to and perfect the mechanism of a free and open market and a national market system for proposed Rule 49(a) not to include specified provisions of the current rule.

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[19] *See* 17 CFR 242.1001(a)(2)(v).

[20] 17 CFR 242.1002(b)(1).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* note 5.

Specifically, the Exchange does not believe that proposed Rule 49(a) needs to be limited to what is currently defined as an "Emergency Condition" or be invoked for only ten days because the proposed rule would be invoked as part of a robust business continuity and disaster recovery plan in the event of a wide-scale disruption, as required by Rule 1001(a)(2)(v) of Regulation SCI.[24] For similar reasons, the Exchange does not believes that proposed Rule 49 needs separate provisions specifying notice requirements to the Commission because these are now required by Rule 1002(b) of Regulation SCI.[25]

Finally, the Exchange believes that moving the text of current Rule 438 to proposed Rule 49(b)(N), and renaming Rule 49 as "Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing," would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would consolidate into a single rule related content, *i.e.,* the Exchange's proposed disaster recovery plan and mandatory testing requirements related to such plan. Thus, the proposed rule change would make the Exchange's rules easier to navigate for Exchange members, the Commission, and the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Exchange-listed securities on its Disaster Recovery Facility. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally because it provides transparency in Exchange rules of which rules would govern trading in Exchange-traded securities if they trade on the Exchange's Disaster Recovery Facility.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–48, and should be submitted on or before September 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–19054 Filed 8–10–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78485; File No. SR–NYSEArca–2016–115]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

August 5, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 1, 2016, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to to amend the NYSE Arca Options Fee Schedule. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[24] 17 CFR 242.1001(a)(2)(v).

[25] 17 CFR 242.1002(b).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule effective August 1, 2016. Specifically, the Exchange proposes to modify the qualification for Tier C of Customer and Professional Customer Posting Credit Tiers in Non-Penny Pilot Issues (the "Posting Credit Tiers"), as described below.

The Customer Posting Credit Tiers consists of a Base Tier and Tiers A, B and C, which provide for specified credits if specified volume thresholds have been met.[3] Currently, Tier C of the Posting Credit Tiers provides a $0.90 per contract credit to OTP Holders and OTP Firms (collectively, "OTPs") that meet or exceed a qualification basis of at least 1.50% of Total Industry Customer equity and ETF option ADV ("TCADV") from Customer and Professional Customer Posted Orders in all Issues, of which at least 0.40% of TCADV is from Customer and Professional Customer Posted Orders in non-Penny Pilot Issues.

The Exchange is proposing to modify the qualification for Tier C by maintaining the requirement of at least 1.50% of TCADV from Customer and Professional Customer Posted Orders in all Issues, but reducing the portion of TCADV from Customer and Professional Customer Posted Orders in non-Penny Pilot Issues from 0.40% to 0.30%. The Exchange believes that reducing the required portion of posted orders in non-Penny Pilot issues while maintaining the overall volume threshold to qualify for Tier C would make the Tier (and related credit) more achievable given that the vast majority of options issues traded on the Exchange are in Penny Pilot Issues. The Exchange believes that the modification to make Tier C more achievable would provide additional incentive to OTPs to direct Customer (and Professional Customer) order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed modification to Tier C is reasonable, equitable, and not unfairly discriminatory because it would be available to all OTPs that execute posted electronic Customer (and Professional Customer) orders on the Exchange on an equal and non-discriminatory basis. The Exchange believes that modifying Tier C to reduce the portion of posted orders in non-Penny Pilot issues required to qualify for the Tier is equitable and not unfairly discriminatory because the change would enable more OTPs to qualify for the credit, which in turn, could reduce OTPs overall transaction costs on the Exchange. Moreover, the Exchange believes the proposed modifications would provide additional incentives to OTPs to direct Customer (and Professional Customer) order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change, which would make Tier C more achievable, would continue to encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. In addition, the proposed change to Tier C would be available to all similarly situated OTPs and should therefore encourage competition without undue burden.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

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[3] The Exchange notes that there is a posting credit of $0.75 associated with a Base Tier for which there is no volume requirement.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 15 U.S.C. 78s(b)(2)(B).

- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–115 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–115. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–115, and should be submitted on or before September 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–19055 Filed 8–10–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Notice of funding availability for the Great Lakes Region SBTRC.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for business centered community-based organizations, transportation-related trade associations, colleges and universities, community colleges, or chambers of commerce, registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Great Lakes Region (Illinois, Indiana, Michigan, Ohio, and Wisconsin).

DATES: Complete Proposals must be received on or September 16, 2016, 6:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed.

ADDRESSES: Applications must be electronically submitted through *Grants.gov.* Only applicants who comply with all submission requirements described in this notice and electronically submit valid applications through *Grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Ms. Steronica Mattocks, Program Analyst, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–0658. Email: *sbtrc@dot.gov.*

SUPPLEMENTARY INFORMATION: OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term "small business" will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, "transportation-related" is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU/SBTRCGREATLAKES–2016–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to Small and Disadvantaged Businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $232,000.

Award Floor: $224,000.

Program Authority: DOT is authorized under 49 U.S.C. 332 (b) (4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

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[10] 17 CFR 200.30–3(a)(12).

A. Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (*i.e.* The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, DOT Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

B. Federal Award Information

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under 49 CFR parts 23 and 26 as Disadvantaged Business Enterprises (SBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions. The SBTRCs are established and funded through Cooperative Agreements between eligible applicants and OSDBU. The SBTRCs function as regional offices of OSDBU and fully execute the mission of the OSDBU nationally.

OSDBU enters into Cooperative Agreements with recipients to establish and fund a regional SBTRC. Under the Cooperative Agreement OSDBU will be "substantially involved" with the overall operations of the SBTRC. This involvement includes directing SBTRC staff to travel and represent OSDBU on panels and events. OSDBU will make one award under this announcement. Award ceiling for this announcement is $232,000. The recipient will begin performing on the award on October 1, 2016 and the period of performance (POP) will be October 1, 2016 to September 30, 2017. This is a 1 year grant with an option to renew for 2 additional years at the discretion of U.S. DOT.

Cooperative agreement awards will be distributed to the region(s) as follows:

Great Lakes Region.	Ceiling: $232,000 per year. Floor: $224,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding will reimburse an on-site Project Director for *100%* of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. The SBTRC will furnish all labor, facilities and equipment to perform the services described in this announcement.

C. Eligibility Information

1. Eligible Applicant

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(a) Be an established 501 C (3) or 501 C (6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(b) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(c) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program/Recipient Requirements

(a) Assessments, Business Analyses

Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

(b) General Management & Technical Training and Assistance

Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. A complete list of businesses that have filled out the form shall be submitted as part of the SBTRC report, submitted via email to the Regional Assistance Division on a regular basis (using the SBTRC report). This report will detail SBTRC activities and performance results. The data provided must be supported by the narrative (if asked).

Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities. Coordinate efforts with OSDBU in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(c) Business Counseling

Collaborate with agencies, such as State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month. This counseling includes in-person meetings or over the phone, and does not include any time taken to do email correspondence.

(d) Planning Committee

Establish a Regional Planning Committee consisting of at least 10 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRCs headquarters state must have representation on the planning committee. The committee shall be established no later than 60 days after the execution of the Cooperative Agreement between the OSDBU and the selected SBTRC.

Provide a forum for the federal, state, and local agencies to disseminate information about upcoming DOT procurements and SBTRC activities.

Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members (conference calls and/or video conferences are acceptable).

Use the initial session hosted by the SBTRC to explain the mission of the committee and identify roles of staff and the members of the group.

Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Project Director or his/her designee.

(e) Outreach Services/Conference Participation

Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently are or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU upon request.

Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

Develop a "targeted" database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, *i.e.*, access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the regional Assistance Division for review and posting on the OSDBU Web site on a regular basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation. This information can be submitted as part of the SBTRC report.

Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the OSDBU will provide DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

Submit a conference summary report within the "Events" section of the SBTRC Report. The conference summary report should summarize the activity, contacts made, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region (commonly referred to as "Small Business Summits").

Participate in the SBTRC Monthly teleconference call, hosted by the OSDBU Regional Assistance Division.

(f) Short Term Lending Program (STLP)

Work with STLP participating banks and if not available, other institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP, and/or other financial assistance programs, to the transportation-related small business community. Seminars/workshops must cover the entire STLP/loan process, form completion of STLP/loan applications and preparation of the loan package.

Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of four (4) completed STLP applications per year.

Provide direct support, technical support, and advocacy services to Small and Disadvantaged Businesses interested in obtaining a loan from another type of Government Lending Program. Government Lending Programs include Federal, State, and Local level programs. The SBTRC will be required to generate a minimum of three (3) completed Government Lending Program applications per year.

(g) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of two (2) complete Bonding Education Programs and secure 3% of the total DBE contract value for each transportation project. The BEP consists of the following components; (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants to provide technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver a minimum of ten (10) disadvantaged business participants in the BEP with either access to bonding or an increase in the bonding capacity. The programs will be funded separately and in addition to the amount listed in 1.3 of the solicitation.

(h) Women and Girls in Transportation Initiative (WITI)

Pursuant to *Executive Order 13506,* and *49 U.S.C. 332(b)(4) & (7),* the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation enemies in their region. The WITI program shall be developed in conjunction with the skill needs of the US DOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

Each region will establish a Women in Transportation Advisory Committee. The committee will provide a forum to identify and provide workable solutions to barriers that women-owned businesses encounter in transportation-related careers. The committee will have 5 members (including the SBTRC Project Director) with a 1 year membership. Meetings will be conducted on a quarterly basis at an agreeable place and time.

3. Office of Small and Disadvantaged Business Utilization (OSDBU) Requirements

(a) Provide consultation and technical assistance in planning, implementing, and evaluating activities under this announcement.

(b) Provide orientation and training to the applicant organization.

(c) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(d) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(e) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(f) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(g) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(h) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(i) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

D. Application and Submission Information

(a) Format for Proposals

Each proposal must be submitted to *Grants.gov* in the format set forth in the application form attached as Appendix A to this announcement.

(b) Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section C of this announcement, will submit only one proposal per region for consideration by OSDBU. Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to *Grants.gov.*

(c) Each applicant must be registered in System for Award Management (SAM) and provide their unique Entity Identifier with the proposal.

(d) Proposals must be received in *Grants.gov* no later than September 16, 2016, 6:00 p.m. Eastern Standard Time (EST).

E. Application Review

1. Selection Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

○ Approach and strategy (25 points)
○ Linkages (25 points)
○ Organizational Capability (25 points)
○ Staff Capabilities and Experience (15 points)
○ Cost Proposal (10 points)

(a) Approach and Strategy (25 points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section C will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(b) Linkages (25 points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and establish networks with existing resources in their geographical area. The applicant should describe their strategy to obtain and collaboration on SBTRC from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), State DOTs, and State Highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(c) Organizational Capability (25 points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section C. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to transportation-related small businesses in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small business in the transportation industry, but to also successfully manage and maintain their internal financial, payment, and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(d) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, education levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive and Project Directors must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(e) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section B. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

(f) Scoring Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

(g) Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

2. Review and Selection Process

A team of people will evaluate the proposals. Those proposals meeting the mandatory criteria will be assessed based on the above mentioned criteria. The proposals demonstrating the organization's capacity to fully execute the requirements of this grant will be considered. The proposal receiving the highest overall score will be awarded.

F. Federal Award Administration

Following the evaluation outlined in Section E, the OSDBU will announce the awarded applicant with a written Notice of Funding Award. The NOFA will also include the cooperative agreement for signature.

(a) Administrative and National Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Cost Principles and Audit Requirements for Federal Awards found in *2 CFR part 200,* as adopted by DOT as 2 CFR part1201.

(b) Reporting

Performance Reporting—The recipient of this cooperative agreement must collect information and report on the cooperative agreement performance with respect to the relevant deliverables that are expected to be achieved through the cooperative agreement. Performance indicators will include formal goals or targets, but will include baseline measures for an agreed-upon timeline, and will be used to evaluate and monitor the results that the cooperative agreement funds achieve to ensure that funds achieve the intended long-term outcomes of the cooperative agreement program.

Progress Reporting—The recipient for this cooperative agreement funding must submit quarterly progress reports and annual Federal Financial Report (SF–425) on the financial condition of the cooperative agreement and its progress, as well as an Annual Budget Review and Implementation Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the program.

G. Federal Awarding Agency Contracts

For further information this notice please contact the OSDBU program staff via email at *sbtrc@dot.gov,* or call Ms. Steronica Mattocks at 202–366–0658. To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions.

H. Other Information

Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI)"; (2) mark each affected page "CBI"; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT received a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulation as *49 CFR 7.17.* Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued on: July 25, 2016.

John G. Ralston,

Acting Director.

[FR Doc. 2016–18327 Filed 8–10–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Notice of funding availability for the Gulf Region SBTRC.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for business centered community-based organizations, transportation-related trade associations, colleges and universities, community colleges, or chambers of commerce, registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Gulf Region (Louisiana, New Mexico, Oklahoma, and Texas).

DATES: Complete Proposals must be received on or September 16, 2016, 6:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed.

ADDRESSES: Applications must be electronically submitted through *Grants.gov.* Only applicants who comply with all submission requirements described in this notice and electronically submit valid applications through *Grants.gov* will be eligible for award

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Ms. Steronica Mattocks, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., Washington, DC, 20590. Telephone: (202) 366–0658. Email: sbtrc@dot.gov.

SUPPLEMENTARY INFORMATION: OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term "small business" will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, "transportation-related" is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU/SBTRCGULF–2016–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to Small and Disadvantaged Businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $190,000.

Award Floor: $170,000.

Program Authority: DOT is authorized under 49 U.S.C. 332 (b) (4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

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A. Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (*i.e.* The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, DOT Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

B. Federal Award Information

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section, 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under 49 CFR parts 23 and 26 as Disadvantaged Business Enterprises (SBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions. The SBTRCs are established and funded through Cooperative Agreements between eligible applicants and OSDBU. The SBTRCs function as regional offices of OSDBU and fully execute the mission of the OSDBU nationally.

OSDBU enters into Cooperative Agreements with recipients to establish and fund a regional SBTRC. Under the Cooperative Agreement OSDBU will be "substantially involved" with the overall operations of the SBTRC. This involvement includes directing SBTRC staff to travel and represent OSDBU on panels and events. OSDBU will make one award under this announcement. Award ceiling for this announcement is $190,000. The recipient will begin performing on the award on October 1, 2016 and the period of performance (POP) will be October 1, 2016 to September 30, 2017. This is a 1 year grant with an option to renew for 2 additional years at the discretion of U.S. DOT.

Cooperative agreement awards will be distributed to the region(s) as follows:

Gulf Region ..	Ceiling: $190,000 per year. Floor: $170,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding will reimburse an on-site Project Director for *100%* of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. The SBTRC will furnish all labor, facilities and equipment to perform the services described in this announcement.

C. Eligibility Information

1. Eligible Applicant

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(a) Be an established 501 C (3) or 501 C (6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(b) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(c) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements/Recipient Responsibilities

(a) Assessments, Business Analyses

Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

(b) General Management & Technical Training and Assistance

Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. A complete list of businesses that have filled out the form shall be submitted as part of the SBTRC report, submitted via email to the Regional Assistance Division on a regular basis (using the SBTRC report). This report will detail SBTRC activities and performance results. The data provided must be supported by the narrative (if asked).

Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities. Coordinate efforts with OSDBU in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(c) Business Counseling

Collaborate with agencies, such as State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month. This counseling includes in-person meetings or over the phone, and does not include any time taken to do email correspondence.

(d) Planning Committee

Establish a Regional Planning Committee consisting of at least 10 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRCs headquarters state must have representation on the planning committee. The committee shall be established no later than 60 days after the execution of the Cooperative Agreement between the OSDBU and the selected SBTRC.

Provide a forum for the federal, state, and local agencies to disseminate information about upcoming DOT procurements and SBTRC activities. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members (conference calls and/or video conferences are acceptable).

Use the initial session hosted by the SBTRC to explain the mission of the committee and identify roles of staff and the members of the group. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Project Director or his/her designee.

(e) Outreach Services/Conference Participation

Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently are or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU upon request. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a Web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

Develop a "targeted" database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, *i.e.*, access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the regional Assistance Division for review and posting on the OSDBU Web site on a regular basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation. This information can be submitted as part of the SBTRC report.

Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the OSDBU will provide DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

Submit a conference summary report within the "Events" section of the SBTRC Report. The conference summary report should summarize the activity, contacts made, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor and OSDBU transportation related conference in the region (commonly referred to as "Small Business Summits").

Participate in the SBTRC Monthly teleconference call, hosted by the OSDBU Regional Assistance Division.

(f) Short Term Lending Program (STLP)

Work with STLP participating banks and if not available, other institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP, and/or other financial assistance programs, to the transportation-related small business community. Seminars/workshops must cover the entire STLP/loan process, form completion of STLP/loan applications and preparation of the loan package.

Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of four (4) completed STLP applications per year. Provide direct support, technical support, and advocacy services to Small and Disadvantaged Businesses interested in obtaining a loan from another type of Government Lending Program. Government Lending Programs include Federal, State, and Local level programs. The SBTRC will be required to generate a minimum of three (3) completed Government Lending Program applications per year.

(g) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of two (2) complete Bonding Education Programs and secure 3% of the total DBE contract value for each transportation project. The BEP consists of the following components; (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants to provide technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver a minimum of ten (10) disadvantaged business participants in the BEP with either access to bonding or an increase in the bonding capacity. The programs will be funded separately and in addition to the amount listed in 1.3 of the solicitation.

(h) Women and Girls in Transportation Initiative (WITI)

Pursuant to *Executive Order 13506,* and *49 U.S.C. 332(b)(4) & (7),* the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation enemies in their region. The WITI program shall be developed in conjunction with the skill needs of the U.S. DOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

Each region will establish a Women in Transportation Advisory Committee. The committee will provide a forum to identify and provide workable solutions to barriers that women-owned businesses encounter in transportation-related careers. The committee will have 5 members (including the SBTRC Project Director) with a 1 year membership. Meetings will be conducted on a quarterly basis at an agreeable place and time.

3. Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(a) Provide consultation and technical assistance in planning, implementing, and evaluating activities under this announcement.

(b) Provide orientation and training to the applicant organization.

(c) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(d) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(e) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(f) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(g) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(h) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(i) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

D. Application and Submission Information

(a) Format for Proposals

Each proposal must be submitted to *Grants.gov* in the format set forth in the application form attached as Appendix A to this announcement.

(b) Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section C of this announcement, will submit only one proposal per region for consideration by OSDBU. Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to *Grants.gov.*

(c) Each applicant must be registered in System for Award Management (SAM) and provide their unique Entity Identifier with the proposal.

(d) Proposals must be received in *Grants.gov* no later than September 16, 2016, 6:00 pm Eastern Standard Time (EST).

E. Application Review

1. Selection Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- ○ Approach and strategy (25 points)
- ○ Linkages (25 points)
- ○ Organizational Capability (25 points)
- ○ Staff Capabilities and Experience (15 points)
- ○ Cost Proposal (10 points)

(a) Approach and Strategy (25 points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section C will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(b) Linkages (25 points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and establish networks with existing resources in their geographical area. The applicant should describe their strategy to obtain and collaboration on SBTRC from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), State DOTs, and State Highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(c) Organizational Capability (25 points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section C. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to transportation-related small businesses in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small business in the transportation industry, but to also successfully manage and maintain their internal financial, payment, and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(d) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, education levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive and Project Directors must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(e) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section B. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

(f) Scoring Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

(g) Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

2. Review and Selection Process

A team of people will evaluate the proposals. Those proposals meeting the mandatory criteria will be assessed based on the above mentioned criteria. The proposals demonstrating the organization's capacity to fully execute the requirements of this grant will be considered. The proposal receiving the highest overall score will be awarded.

F. Federal Award Administration

Following the evaluation outlined in Section E, the OSDBU will announce the awarded applicant with a written Notice of Funding Award. The NOFA will also include the cooperative agreement for signature.

(a) Administrative and National Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Cost Principles and Audit Requirements for Federal Awards found in *2 CFR part 200,* as adopted by DOT as 2 CFR part 1201.

(b) Reporting

Performance Reporting—The recipient of this cooperative agreement must collect information and report on the cooperative agreement performance with respect to the relevant deliverables that are expected to be achieved through the cooperative agreement. Performance indicators will include formal goals or targets, but will include baseline measures for an agreed-upon timeline, and will be used to evaluate and monitor the results that the cooperative agreement funds achieve to ensure that funds achieve the intended long-term outcomes of the cooperative agreement program.

Progress Reporting—The recipient for this cooperative agreement funding must submit quarterly progress reports and annual Federal Financial Report (SF–425) on the financial condition of the cooperative agreement and its progress, as well as an Annual Budget Review and Implementation Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the program.

G. Federal Awarding Agency Contracts

For further information this notice please contact the OSDBU program staff via email at *sbtrc@dot.gov,* or call Ms. Steronica Mattocks at 202–366–0658. To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions.

H. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT received a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulation as *49 CFR 7.17.* Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued On: July 25, 2016.

John G. Ralston,

Acting Director.

[FR Doc. 2016–18326 Filed 8–10–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability under the Grants for Transportation of Veterans in Highly Rural Areas

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Funding Availability (Grant Renewals).

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds under the Grants for Transportation of Veterans in Highly Rural Areas. This Notice of Funding Availability (Notice) contains information concerning the Grants for Transportation of Veterans in Highly Rural Areas program, grant renewal application process, and amount of funding available.

FOR FURTHER INFORMATION CONTACT: Darren Wallace, National Coordinator, Highly Rural Transportation Grants, Veterans Transportation Program, Member Services (10NF4), 2957 Clairmont Road, Atlanta, GA 30329; (404) 828–5380 (this is not a toll-free number); and Sylvester Wallace at *sylvester.wallace2@va.gov.*

Announcement Type: Notice of Funding Availability (Grant Renewals)

Funding Opportunity Number: VA–HRTG–2016

Catalog of Federal Domestic Assistance (CFDA) Number: 64.035

DATES AND ADDRESSES: Applications for assistance under the Grants for Transportation of Veterans in Highly Rural Areas Program must be submitted to *www.grants.gov* by 4:00 p.m. eastern daylight time on September 12, 2016. In the interest of fairness to all competing applicants and with the single exception described farther below regarding unforeseen technical problems beyond the control of the applicant with the *Grants.gov* Web site, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages (in the case of grants.gov), or other delivery-related problems.

Access to the Application

The application can be found at *http://www.grants.gov/web/grants/search-grants.html,* utilizing the ''search by Catalog of Federal Domestic Assistance number'' function, and entering in that search field the number 64.035. Questions should be referred to the Veterans Transportation Program Office at (404) 828–5380 (this is not a toll-free number) or by email at *HRTG@va.gov.* For further information on Grants for Transportation of Veterans in Highly Rural Areas Program requirements, see the Final Rule published in the **Federal Register** (78 FR 19586) on April 2, 2013, which is codified in 38 CFR 17.700–730.

Submission of Application Package

Applications may not be sent by facsimile. Applications must be submitted to *www.grants.gov* by the application deadline. Applications must be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. All applicable forms cited in the application description must be included.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Description

Overview

Access to VA care for veterans that are in highly rural areas continues to be an issue across the United States. VA has established this program to help address barriers to access to care. This program funds innovative approaches to transporting veterans in highly rural areas who typically have longer commute times to Department of Veterans Affairs medical centers (VA Medical Centers).

Purpose

VA Veterans Transportation Program (VTP) is pleased to announce that it is seeking grant renewal applications for Grants for Transportation of Veterans in Highly Rural Areas. This program furthers the Department's mission by offering renewal grants to current grantees to enable them to continue to assist veterans in highly rural areas through innovative transportation services to travel to VA medical centers and to otherwise assist in providing transportation services in connection with the provision of VA medical care to these veterans.

Authority

Funding applied for under this Notice is authorized by section 307 of the Caregivers and Veterans Omnibus

Health Services Act of 2010, Pub. L. 111–163, 307 (the 2010 Act), as implemented by regulations codified at 38 CFR 17.700–730, Grants for Transportation of Veterans in Highly Rural Areas. Funds made available under this Notice are subject to the requirements of the aforementioned regulations and other applicable laws and regulations.

Award Information

In accordance with 38 CFR 17.710, VA is issuing this Notice for renewal grants under the Grants for Transportation of Veterans in Highly Rural Areas Program for fiscal year 2016. Approximately $3 million is authorized to be appropriated for this fiscal year. If additional funding becomes available, VA will issue additional Notices of Funding Availability to permit other grantees to apply for Grants under the Program (in accordance with the terms and conditions of such Notices of Funding Availability). The following requirements apply to grants awarded under this Notice:

- One renewal grant may be awarded to each grantee for fiscal year 2016 for each highly rural area in which the grantee provides transportation services.(A listing of the highly rural counties can be found at this Web site under additional resources:*http://www.va.gov/HEALTHBENEFITS/vtp/grant_applicants.asp*).
- Transportation services may not be simultaneously provided by more than one grantee in any single highly rural area.
- No single grant will exceed $50,000.
- A veteran who is provided transportation services through a grantee's use of these grant monies will not be charged for such services.
- Renewal grants awarded under this Notice will be for a 1-year period.
- All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law.

Eligibility Information

Eligible Applicants

Current 2015 grantees are the only eligible entities that are eligible to apply for a renewal grant. Interested eligible entities must submit a complete renewal grant application package to be considered for a grant renewal. Further, a renewal grant will only be awarded if the grantee's program will remain substantially the same as the program for which the original grant was awarded. How the grantee will meet this requirement must be specifically addressed in the renewal grant application.

Cost Sharing or Matching

This solicitation does not require grantees to provide matching funds as a condition of receiving such grants.

Other

Additional grant application requirements are specified in the application package. Submission of an incorrect or incomplete application package will result in the application being rejected during the threshold review, the initial review conducted by VA, to ensure the application package contains all required forms and certifications. Complete packages will then be subject to the evaluation/scoring and selection processes described in § 17.705(c) and (d), respectively. Applicants will be notified of any additional information needed to confirm or clarify information provided in the renewal grant application and the deadline by which to submit such information.

Application and Submission Information

Renewal applications will be submitted through *Grants.gov*. *Grants.gov* is a ''one-stop storefront'' that provides a unified process for all customers of federal awards to find funding opportunities and apply for funding. Complete instructions on how to register and submit a renewal grant application can be found at *www.Grants.gov*. If the applicant experiences technical difficulties at any point during this process, please call the *Grants.gov* Customer Support Hotline at 800–518–4726, 24 hours a day, 7 days a week, except federal holidays.

Registration in *Grants.gov* is required prior to submission. VA strongly encourages registering with *Grants.gov* several weeks before the deadline for application submission. The deadline for applying for funding under this announcement is September 12, 2016.

Search for the funding opportunity on *Grants.gov*. Please use the following identifying information when searching for the funding opportunity on *Grants.gov*. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is 64.035, titled ''Veterans transportation program,'' and the funding opportunity number is VA–HRTG–2016.

Submit an application consistent with this solicitation by following the directions in *Grants.gov*. Within 24–48 hours after submitting the electronic application, the applicant should receive an email validation message from *Grants.gov*. The validation message will state whether the renewal grant application has been received and validated, or rejected, with an explanation. Important: Applicants are urged to submit their applications at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

If an applicant experiences unforeseen *Grants.gov* technical issues beyond the applicant's control that prevents submission of its application by the deadline, the applicant must contact the VTP Office staff no later than 24 hours after the deadline and request approval to submit its application. At that time, VTP Office staff will instruct the applicant to submit specific information detailing the technical difficulties. The applicant must email: a description of the technical difficulties, a timeline of submission efforts, the complete grant application, the applicant's Data Universal Numbering System (DUNS) number, and *Grants.gov* Help Desk tracking number(s) received. After the program office reviews all of the information submitted, and contacts the *Grants.gov* Help Desk to validate the technical issues reported, VA will contact the applicant to either approve or deny the request to submit a late application. If the technical issues reported cannot be validated, the application will be rejected as untimely.

To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to begin the registration process in sufficient time, (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its Web site, (3) failure to follow all of the instructions in the VA solicitation, and (4) technical issues experienced with the applicant's computer or information technology (IT) environment. Notifications regarding known technical problems with *Grants.gov*, if any, are posted on the *Grants.gov* Web site.

Content and Form of Application Submission

This section describes what a renewal application must include. Applicants should anticipate that failure to submit an application that contains all of the specified elements will result in the rejection of their application at the threshold review stage. Moreover, applicants should anticipate that if applications are not adequately responsive to the scope of the solicitation, particularly to any critical element, or fail to include a program narrative, budget detail worksheet including a budget narrative, tribal resolution (if applicable), eligibly entity designation, or a list of the highly rural county or counties to be served, they will be rejected and receive no further consideration.

Threshold Review Criteria: (Critical Elements)

- *Application deadline:* Applications not received by the application deadline through *www.grants.gov* will not be reviewed.
- *Eligibility:* Applications that do not conform to the eligibility requirements at the beginning section of this document will not be reviewed.
- *Budget detail worksheet including a budget narrative:* VA strongly recommends use of appropriately descriptive file names (*e.g.,* ''Program Narrative,'' ''Budget Detail Worksheet and Budget Narrative,'' ''Timelines,'' ''Memoranda of Understanding,'' ''Resumes'') for all attachments. VA recommends that resumes be included in a single file.
- *Information to complete the Application for Federal Assistance (SF–424):* The SF–424 is a standard form required for use as a cover sheet for submission of pre-applications, applications, and related information. *Grants.gov* takes information from the applicant's profile to populate the fields on this form.
- *Program Narrative:* Provide a detailed narrative of your program scope and specifically discuss the innovative modes and methods of transportation services to be provided. If the provision of transportation services will necessitate procurement or use of specific equipment, such equipment must be specifically listed.

Note on project evaluations: Applicants that propose to use funds awarded through this solicitation to conduct project evaluations should be aware that certain project evaluations (such as systematic investigations designed to develop or contribute to knowledge) may constitute research. However, project evaluations that are intended only to generate internal improvements to a program or service, or are conducted only to meet VA's performance measure data reporting requirements, likely do not constitute research. Research, for the purposes of VA-funded programs, is defined as, ''a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.'' 38 CFR 16.102(d). In addition, research involving human subjects is subject to certain added protections, as set forth in 38 CFR part 16. Applicants should provide sufficient information for VA to determine whether particular project activities they propose would either intentionally or unintentionally collect and/or use information in such a way that it meets VA's regulatory definition of research and thereby invoke the requirements and procedures set forth in 38 CFR part 16.

Budget Detail Worksheet and Budget Narrative

Budget Detail Worksheet: A sample SF 424A Budget Detail Worksheet can be found at the *www.grants.gov* Web site. Please submit a budget and label it, as the example above indicates. If the budget is submitted in a different format, the budget categories listed in the sample budget worksheet must be included.

Budget Narrative: The Budget Narrative should thoroughly and clearly describe *every* category of expense listed in the Budget Detail Worksheet. The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Detail Worksheet. The narrative should explain how *all* costs were estimated and calculated and how they are relevant to the completion of the proposed project. The narrative may include tables for clarification purposes but need not be in a spreadsheet format. As with the Budget Detail Worksheet, the Budget Narrative must be broken down by year. Note: All non-federal entities have to be in compliance with 2 CFR 200.400–475 Cost Principles and all Office of Management and Budget (OMB) Regulations and Circulars.

Budget Brief (example):

1. Our organization requests ____ for the acquisition of ____ van(s).
2. The total cost of the van(s) ____. This is the amount requested from VA.
3. Our organization will utilize ____ for innovative approaches for transporting veterans. This is the amount requested from VA for a maximum of $50,000.

Indirect Cost Rate Agreement (if Applicable)

Indirect costs are allowed only if the applicant has a federally approved indirect cost rate. (This requirement does not apply to units of local government.) A copy of the rate approval must be attached. If the applicant does not have an approved rate, one can be requested by contacting the applicant's cognizant federal agency, which will review all documentation and approve a rate for the applicant organization or, if the applicant's accounting system permits, costs may be allocated in the direct cost categories. If VA is the cognizant federal agency, obtain information needed to submit an indirect cost rate proposal at the contact person listed in this solicitation.

Tribal Authorizing Resolution (if Applicable)

If an application identifies a subrecipient that is either (1) a tribe or tribal organization or (2) a third party proposing to provide direct services or assistance to residents on tribal lands, then a current authorizing resolution of the governing body of the tribal entity or other enactment of the tribal council or comparable governing body authorizing the inclusion of the tribe or tribal organization and its membership must be included with the application. In those instances when an organization or consortium of tribes proposes to apply for a grant on behalf of a tribe or multiple specific tribes, then the application must include a resolution from all tribes that will be included as a part of the services/assistance provided under the grant. A consortium of tribes for which existing consortium bylaws allow action without support from all tribes in the consortium (*i.e.,* without authorizing resolution or other enactment of each tribal governing body) may submit a copy of its consortium bylaws with the application in order to satisfy this requirement.

Submission Dates and Times

Renewal grant applications under the Grants for Transportation of Veterans in Highly Rural Areas Program must be submitted to *www.grants.gov* by 4:00 p.m. eastern daylight time on September 12, 2016. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour and with the single exception described above regarding unforeseen technical problems beyond the control of the applicant with the *Grants.gov* Web site, VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages (in the case of grants.gov), or other delivery-related problems.

The application can be found at *http://www.grants.gov/web/grants/search-grants.html,* utilizing the ''search by Catalog of Federal Domestic Assistance number'' function, and entering in that search field the number 64.035. Questions should be referred to the Veterans Transportation Program Office at (404) 828–5380 (this is not a toll-free number) or by email at *HRTG@va.gov.* For further information on Grants for Transportation of Veterans in Highly Rural Areas Program requirements, see the governing regulations codified at 38 CFR 17.700–730.

Renewal grant applications may not be sent by facsimile. These applications must be submitted to *www.grants.gov* by the application deadline; they must also be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. All applicable forms cited in the application description must be included.

Intergovernmental Review

Some states require that applicants must contact their State's Single Point of Contact (SPOC) to find out and comply with the State's process, to comply with Executive Order (E.O.) 12372 (1982). Names and addresses of the SPOCs are listed in the Office of Management and Budget's homepage at *www.whitehouse.gov/omb/grants_spoc/*

Funding Restrictions

Grants will only be awarded to those organizations that are eligible under law as described in the eligibility information section.

Other Submission Requirements

For technical assistance with submitting the application, contact the *Grants.gov* Customer Support Hotline at 800–518–4726 or via email to *support@grants.gov.*

Note: The *Grants.gov* Support Hotline hours of operation are 24 hours a day, 7 days a week, except federal holidays. For assistance with any other requirement of this solicitation, contact Darren Wallace, National Program Coordinator for Grants for Transportation of Veterans in Highly Rural Areas, at (404) 828–5380 (this is not a toll-free number) or by email to *Sylvester.Wallace2@va.gov.*

Additional forms that may be required in connection with an award are available for download on *www.grants.gov.* Examples of these forms can be viewed at the *www.grants.gov* Web site. For successful applicants, receipt of funds will be contingent upon submission of all necessary forms. Please note in particular the following forms: Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirement; Disclosure of Lobbying Activities (Required for any applicant that expends any funds for lobbying activities; this form must be downloaded, completed, and then uploaded); and Standard Assurances (SF 424B) (Required to be submitted to the VTP Office prior to the receipt of any award funds).

Application Review Information

Criteria

VA is committed to ensuring a fair and open process for awarding these renewal grants. The VTP Office will review the renewal grant application to make sure that the information presented is reasonable, understandable, measurable, and achievable, as well as consistent with the solicitation. Peer reviewers will conduct a threshold review of all applications submitted under this solicitation to ensure they meet all of the critical elements and all other minimum requirements as identified herein. The VTP Office may use either internal peer reviewers, external peer reviewers, or a combination to review the applications under this solicitation. An external peer reviewer is an expert in the field of the subject matter of a given solicitation who is NOT a current VA employee. An internal reviewer is a current VA employee who is well-versed or has expertise in the subject matter of this solicitation. Eligible applications will then be evaluated, scored, and rated by a peer review panel. Peer reviewers' ratings and any resulting recommendations are advisory only.

The VTP, Member Services Office conducts a financial review of applications for potential discretionary awards to evaluate the fiscal integrity and financial capability of applicants; examines proposed costs to determine if the Budget Detail Worksheet and Budget Narrative accurately explain project costs; and determines whether costs are reasonable, necessary, and allowable under applicable federal cost principles and agency regulations.

Absent explicit statutory authorization or written delegation of authority to the contrary, the Veterans Health Administration, through the VTP Office, will forward the reviewers' recommendations for award to the Secretary of Veterans Affairs, who will then review and approve each award decision. Such determinations by the Secretary will be final. VA will also give consideration to factors including, but not limited to: underserved populations, geographic diversity, strategic priorities, and available funding when making awards.

Review and Selection Process

Selection of Renewal Grants for Transportation of Veterans in Highly Rural Areas is very competitive. Listed below are the scoring and selection criteria:

1. Renewal Grant Scoring: Renewal applications will be scored using the following selection criteria:

A. VA will award up to 55 points (an applicant must score at a minimum of 27.5 points) based on the success of the grantee's program, as demonstrated by the following: Application shows that the grantee or identified subrecipient provided transportation services which allowed participants to be provided medical care timely and as scheduled; and application shows that participants were satisfied with the transportation services provided by the grantee or identified subrecipient, as described in the Notice;

B. VA will award up to 35 points (an applicant must score at a minimum of 17.5 points) based on the cost effectiveness of the program, as demonstrated by the following: The grantee or identified subrecipient administered the program on budget and grant funds were utilized in a sensible manner, as interpreted by information provided by the grantee to VA under 38 CFR 17.725(a)(1–7); and

C. VA will award up to 15 (an applicant must score at a minimum of 7.5 points) points based on the extent to which the program complied with the grant agreement and applicable laws and regulations.

2. Renewal Grant Selection: VA will use the following process to award renewal grants:

A. VA will rank those grantees who receive at least the minimum amount of total points (52.5) and points per category set forth in the Notice. The grantees will be ranked in order from highest to lowest scores.

B. VA will use the grantee's ranking as the basis for selection for funding. VA will fund the highest-ranked grantees for which funding is available.

Award Administration Information

Award Notices

Successful applicants will receive a Notice of Award (NoA) signed and dated by the Assistant Deputy Under Secretary for Health for Administrative Operations that will set forth the amount of the award and other pertinent information. The NoA is the legal document/instrument issued to notify the awardee that an award has been made and that funds may be requested. It will also include standard Terms and

Conditions related to participation in the Program.

The NoA will be sent through the U.S. Postal Service to the awardee organization as listed on its SF424. Note that any communication between the VTP Office and awardees prior to the issuance of the NoA is *not* authorization to begin performance on the project.

Recipients will use the U.S. Department of Health and Human Services Payment Management System for grant drawdowns. Instructions for submitting requests for payment may be found at *http://www.dpm.psc.gov/*.

Unsuccessful applicants will be notified of their status by letter, which will likewise be sent through the U.S. Postal Service to the applicant organization as listed on its SF 424.

Renewal Grant Agreements

After an applicant is selected for a renewal grant in accordance with 38 CFR 17.705(d), VA will draft a renewal grant agreement to be executed by the Assistant Deputy Under Secretary for Health for Administrative Operations in VA and the grantee. Upon execution of the renewal grant agreement, VA will obligate the approved amount. The renewal grant agreement will provide that:

1. The grantee must operate the program in accordance with the provisions of this section and the grant application;

2. If a grantee's renewal application identified a subrecipient, such subrecipient must operate the program in accordance with the provisions of this section and the grant application; and

3. If a grantee's application identified that funds will be used to procure or operate vehicles to directly provide transportation services, the following requirements must be met:

A. Title to the vehicles must vest solely in the grantee or in the identified subrecipient or with leased vehicles in an identified lender;

B. The grantee or identified subrecipient must, at a minimum, provide motor vehicle liability insurance for the vehicles to the same extent they would insure vehicles procured with their own funds;

C. All vehicle operators must be licensed in a U.S. State or Territory to operate such vehicles;

D. Vehicles must be safe and maintained in accordance with the manufacturer's recommendations; and

E. Vehicles must be operated in accordance with applicable Department of Transportation regulations concerning transit requirements under the Americans with Disabilities Act.

Administrative and National Policy Requirements

Successful applicants selected for awards must agree to comply with additional applicable legal requirements upon acceptance of an award. (VA strongly encourages applicants to review the information pertaining to these additional requirements prior to submitting a renewal application.) As to those additional requirements, we note that while their original grants were subject to additional legal requirements as set forth in 38 CFR parts 43 and 49 those regulatory provisions have since been superseded by the Common Rule governing all Federal Grant Programs. The Common Rule is codified at 2 CFR part 200. Thus, grantees and identified subrecipients awarded renewal grants under the Program must agree as part of their grant agreement to comply with all requirements of the Common Rule, as applicable.

Reporting

Progress Reports

Awardees must agree to cooperate with any VA evaluation of the program and provide required quarterly, annual, and final (at the end of the fiscal year) reports in a form prescribed by VTP. A final report consists of a summation of grant activities which include progress toward goals, financial administration of grant funds, grant administration issues and barriers. Reports are to be submitted electronically. These reports must outline how grant funds were used, describe program progress and barriers, and provide measurable outcomes.

Required quarterly and annual reports must include the following information:

- Record of time expended assisting with the provision of transportation services;
- Record of grant funds expended assisting with the provision of transportation services;
- Trips completed;
- Total distance covered;
- Veterans served;
- Locations which received transportation services; and
- Results of veteran satisfaction survey.

Program Monitoring

The VTP is responsible for program monitoring. All awardees will be required to cooperate in providing the necessary data elements to the VTP. The goal of program monitoring is to ensure program requirements are met; this will be accomplished by tracking performance and identifying quality and compliance problems through early detection. Methods of program monitoring may include: Monitoring the performance of a grantee's or subrecipient's personnel, procurements, and/or use of grant-funded property; collecting, analyzing data, and assessing program implementation and effectiveness; assessing costs and utilization; and providing technical assistance when needed. Site visit monitoring will include the above-described activities, in addition to the conduct of safety assessments and, if applicable, verification of both current driver's licenses and vehicle insurance coverage.

Federal Financial Report

Awardees are required to submit the FFR SF 425 on a quarterly basis. More details will be announced in the NoA.

Audit Requirements

Awardees must comply with the audit requirements of Office of Management and Budget (OMB) Uniform Guidance 2 CFR part 200 subpart F. Information on the scope, frequency and other aspects of the audits can be found on the internet at *https://federalregister.gov/a/2013-30465*.

Program Variations

Any changes in a grantee's program activities which result in deviations from the grant renewal agreement must be reported to VA.

Additional Reporting

Additional reporting requirements may be requested by VA to allow VA to fully assess program effectiveness.

Notice of New Post-Award Reporting Requirements

Applicants should anticipate that all recipients (excluding an individual recipient of Federal assistance) of awards of $25,000 or more under this solicitation, consistent with the Federal Funding Accountability and Transparency Act of 2006 (FFATA), Pub. L. 109–282 (Sept. 26, 2006), will be required to report award information on the subaward reporting system of any first-tier subawards totaling $25,000 or more, and, in certain cases, to report information on the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients. Each applicant entity must ensure that it has the necessary processes and systems in place to comply with the reporting requirements should it receive funding.

It is expected that reports regarding subawards will be made through the FFATA Subaward Reporting System (FSRS) found at *https://www.fsrs.gov*. The FFATA Subaward Reporting

System is the reporting tool Federal prime awardees (*i.e.* prime contractors and prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements. Prime contract awardees will report against sub-contracts awarded and prime grant awardees will report against sub-grants awarded. Prime Contractors awarded a Federal contract or order that is subject to Federal Acquisition Regulation clause 52.204–10 (Reporting Executive Compensation and First-Tier Subcontract Awards) are required to file a FFATA subaward report by the end of the month following the month in which the prime contractor awards any subcontract greater than $25,000.

Please note also that applicants should anticipate that no subaward of an award made under this solicitation may be made to a subrecipient that is subject to the terms of FFATA unless the potential subrecipient acquires and provides a DUNS number.

Other Information

Pursuant to 38 CFR 17.730(a), VA may recover from the grantee any funds that are not used in accordance with a grant agreement. If VA decides to recover funds, VA will issue to the grantee a notice of intent to recover grant funds, and the grantee will then have 30 days to submit documentation demonstrating why the grant funds should not be recovered. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds. When VA determines action will be taken to recover grant funds from the grantee, the grantee is then prohibited under 38 CFR 17.730(b) from receipt of any further grant funds.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on August 2, 2016, for publication.

Dated: August 2, 2016.

Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2016–19163 Filed 8–10–16; 8:45 am]

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Part II

Department of Justice

28 CFR Parts 35 and 36
Amendment of Americans With Disabilities Act Title II and Title III
Regulations To Implement ADA Amendments Act of 2008; Final Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 35 and 36

[CRT Docket No. 124; AG Order No. 3702–2016]

RIN 1190–AA59

Amendment of Americans With Disabilities Act Title II and Title III Regulations To Implement ADA Amendments Act of 2008

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (Department) is issuing this final rule to amend its Americans with Disabilities Act (ADA) regulations in order to incorporate the statutory changes to the ADA set forth in the ADA Amendments Act of 2008 (ADA Amendments Act or the Act), which took effect on January 1, 2009. In response to earlier Supreme Court decisions that significantly narrowed the application of the definition of "disability" under the ADA, Congress enacted the ADA Amendments Act to restore the understanding that the definition of "disability" shall be broadly construed and applied without extensive analysis. Congress intended that the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their statutory obligations not to discriminate based on disability. In this final rule, the Department is adding new sections to its title II and title III ADA regulations to set forth the proper meaning and interpretation of the definition of "disability" and to make related changes required by the ADA Amendments Act in other sections of the regulations.

DATES: This rule will take effect October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Rebecca Bond, Section Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY); this is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

You may obtain copies of this final rule in an alternative format by calling the ADA Information Line at (800) 514–0301 (voice) and (800) 514–0383 (TTY). This final rule is also available on the ADA Home Page at *www.ada.gov.*

SUPPLEMENTARY INFORMATION: The meaning and interpretation of the definitions of "disability" in the title II and title III regulations are identical, and the preamble will discuss the revisions to both regulations concurrently. Because the ADA Amendments Act's revisions to the ADA have been codified into the U.S. Code, the final rule references the revised U.S. Code provisions except in those cases where the reference is to the Findings and Purposes of the ADA Amendments Act, in which case the citation is to section 2 of Public Law 110–325, September 25, 2008.[1]

This final rule was submitted to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for review prior to publication in the **Federal Register**.

I. Executive Summary

Purpose

This rule is necessary in order to incorporate the ADA Amendments Act's changes to titles II (nondiscrimination in State and local government services) and III (nondiscrimination by public accommodations and commercial facilities) of the ADA into the Department's ADA regulations and to provide additional guidance on how to apply those changes.

Legal Authority

The ADA Amendments Act was signed into law by President George W. Bush on September 25, 2008, with a statutory effective date of January 1, 2009. Public Law 110–325, sec. 8, 122 Stat. 3553, 3559 (2008). The Act authorizes the Attorney General to issue regulations under title II and title III of the ADA to implement sections 3 and 4 of the Act, including the rules of construction set forth in section 3. 42 U.S.C. 12205a.

Summary of Key Provisions of the Act and Rule

The ADA Amendments Act made important changes to the meaning and interpretation of the term "disability" in the ADA in order to effectuate Congress's intent to restore the broad scope of the ADA by making it easier for an individual to establish that he or she has a disability. *See* Public Law 110–325, sec. 2(a)(3)–(7). The Department is making several major revisions to the meaning and interpretation of the term "disability" contained in the title II and title III ADA regulations in order to implement the ADA Amendments Act. These regulatory revisions are based on specific provisions in the ADA Amendments Act or on specific language in the legislative history. The revised language clarifies that the term "disability" shall be interpreted broadly and explains that the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations not to discriminate based on disability and that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis. The revised regulations expand the definition of "major life activities" by providing a non-exhaustive list of major life activities that specifically includes the operation of major bodily functions. The revisions also add rules of construction to be applied when determining whether an impairment substantially limits a major life activity. These rules of construction state the following:

—That the term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA;

—that an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population;

—that the primary issue in a case brought under the ADA should be whether an entity covered under the ADA has complied with its obligations and whether discrimination has occurred, not the extent to which the individual's impairment substantially limits a major life activity;

—that in making the individualized assessment required by the ADA, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for "substantially limits" applied prior to the ADA Amendments Act;

—that the comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence;

—that the ameliorative effects of mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a "disability";

—that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and

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[1] The Findings and Purposes of the ADA Amendments Act are also referenced in the codification of the ADA as a note to 42 U.S.C. 12101.

—that an impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment. The final rule also states that an individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. It also provides that individuals covered only under the "regarded as" prong are not entitled to reasonable modifications.

The ADA Amendments Act's revisions to the ADA apply to title I (employment), title II (State and local governments), and title III (public accommodations) of the ADA. Accordingly, consistent with Executive Order 13563's instruction to agencies to coordinate rules across agencies and harmonize regulatory requirements, the Department has adopted, where appropriate, regulatory language that is identical to the revisions to the Equal Employment Opportunity Commission's (EEOC) title I regulations implementing the ADA Amendments Act. *See* 76 FR 16978 (Mar. 25, 2011). This will promote consistency in the application of the ADA and avoid confusion among entities subject to both titles I and II, as well as those subject to both titles I and III.

Changes Made From the Proposed Rule

The final rule retains nearly all of the proposed regulatory text, although some sections were reorganized and renumbered. The section-by-section analysis in appendix C to part 35 and appendix E to part 36 responds to comments and provides additional interpretive guidance on particular provisions. The revisions to the regulatory text, which include substantive changes in response to comments, include the following:

- Added Attention-Deficit/Hyperactivity Disorder (ADHD) as an example of a physical or mental impairment in §§ 35.108(b)(2) and 36.105(b)(2).
- Added "writing" as an example of a major life activity in §§ 35.108(c) and 36.105(c).
- Revised the discussion of the "regarded as prong" in §§ 35.108(f) and 36.105(f) to clarify that the burden is on a covered entity to establish that, objectively, an impairment is "transitory and minor" and therefore not covered by the ADA.
- Modified the rules of construction to make them more consistent with the statute and to provide more clarity, including §§ 35.108(a)(2) and 36.105(a)(2), 35.108(c)(2) and 36.105(c)(2), and 35.108(d)(1) and 36.105(d)(1).
- Revised or added several provisions to more closely conform to the EEOC regulation.

II. Summary of Regulatory Assessment

As noted above, Congress enacted the ADA Amendments Act in 2008 to ensure that persons with disabilities who were denied coverage previously under the ADA would again be able to rely on the protections of the ADA. As a result, the Department believes that the enactment of the law benefits millions of Americans, and that the benefits to many of these individuals are non-quantifiable, but nonetheless significant. This rule incorporates into the Department's titles II and III regulations the changes made by the ADA Amendments Act. In accordance with OMB Circular A–4, the Department estimates the costs and benefits of this proposed rule using a pre-ADA Amendments Act baseline. Thus, the effects that are estimated in this analysis are due to statutory mandates that are not under the Department's discretion. The Department has determined that the costs of this rule do not reach $100 million in any single year, and thus it is not an economically significant rule.

In the Initial Regulatory Assessment (Initial RA), the analysis focused on estimating costs for processing and providing reasonable modifications and testing accommodations[2] to individuals with learning disabilities and ADHD[3] for extra time on exams as a direct result of the ADA Amendments Act. Although the Department's analysis focused only on these specific costs, the Department recognized that the ADA Amendments Act extends coverage to people with the full range of disabilities, and the accommodation of those individuals might entail some economic costs. After review of the comments, and based on the Department's own research, the Department has determined, however, that the above-referenced exam costs represent the only category of measurable compliance costs that the ADA Amendments Act will impose and the Department was able to assess. While other ADA Amendments Act compliance costs might also ensue, the Department has not been able to specifically identify and measure these potential costs. The Department believes, however, that any other potential costs directly resulting from the ADA Amendments Act will likely be minimal and have little impact on the overall results of this analysis.

The data used to support the estimates in this Final Regulatory Assessment (Final RA) focus on (1) the increase in the number of postsecondary students or national examination test takers requesting and receiving accommodations—specifically, requests for extra time on exams—as a result of the changes made to the ADA by the ADA Amendments Act; and (2) the actual cost of these additional accommodations, which involves costs of providing staff with the training on the changes made to the ADA by the ADA Amendments Act, administrative costs to process the additional accommodation requests made as a direct result of the ADA Amendments Act, and the costs of additional proctor time needed for these additional accommodation requests. For both postsecondary institutions and national testing entities, costs are broken down into three components:

- One-time cost of training staff on relevant impact of ADA Amendments Act;
- Annual cost of processing additional accommodation requests for extra exam time made as a direct result of the ADA Amendments Act; and
- Annual cost of proctoring additional time on exams as a direct result of the ADA. Amendments Act.

Based on the Department's calculations, total costs to society for implementing the revisions to the ADA Amendments Act range from $31.4 million to $47.1 million in the first year. The first year of costs will be higher than all subsequent years because the first year includes the one-time costs of training. Note that even the high end of this first-year cost range is well within the $100 million mark that signifies an "economically significant" regulation. The breakdown of total costs by entity is provided in the table below.

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[2] For ease of reference for purposes of the discussion of costs in the Regulatory Assessment, the Department will use the term "accommodations" to reference the provision of extra time, whether it is requested as a reasonable modification pursuant to 28 CFR 35.130(b)(7) and 28 CFR 36.302, or as a testing accommodation (modifications, accommodations, or auxiliary aids and services) provided pursuant to 42 U.S.C. 12189 and 28 CFR 36.309. The Department wishes to preserve the legal distinction between these two terms in its guidance on the requirements of the ADA Amendments Act so it will use both terms where appropriate in the Section by Section Analysis and Guidance.

[3] The Department is using the term ADHD in the same manner as it is currently used in the Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM–5), to refer to three different presentations of symptoms: predominantly inattentive (which was previously known as "attention deficit disorder); predominantly hyperactive or impulsive; or a combined presentation of inattention and hyperactivity-impulsivity. The DSM–5 is the most recent edition of a widely-used manual designed to assist clinicians and researchers in assessing mental disorders. *See Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition DSM–5*, American Psychiatric Association, at 59–66 (2013).

TOTAL COSTS FIRST YEAR (2016), PRIMARY ANALYSIS

Cost category	Low value	Med value	High value
Postsecondary Institutions: ANNUAL Total Costs of Processing Additional Requests and Proctoring Extra Exam Time	$12.8	$18.0	$23.1
Postsecondary Institutions: ONE–TIME Cost for Additional Training at Institutions	9.9	9.9	9.9
National Exams: ANNUAL Total Costs of Processing Additional Requests and Proctoring Extra Exam Time	6.8	9.5	12.2
National Exams: ONE–TIME Cost for Additional Training at Institutions	1.9	1.9	1.9
Total	31.4	39.3	47.1

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

Taking these costs over the next 10 years and discounting to present value terms at a rate of 7 percent, the total costs of implementing this final rule are approximately $214.2 million over 10 years, as shown in the table below.

TOTAL COSTS OVER 10 YEARS, PRIMARY ANALYSIS

Total discounted value ($ millions)	Annualized estimate ($ millions)	Year dollar	Discount rate (percent)	Period covered
$214.2	$28.6	2015	7	2016–2025
243.6	26.3	2015	3	2016–2025

III. Background

The ADA Amendments Act was signed into law by President George W. Bush on September 25, 2008, with a statutory effective date of January 1, 2009. Public Law 110–325, sec. 8. As with other civil rights laws, individuals seeking protection in court under the anti-discrimination provisions of the ADA generally must allege and prove that they are members of the "protected class." Under the ADA, this typically means they have to show that they meet the statutory definition of being an "individual with a disability." *See* 154 Cong. Rec. S8840–44 (daily ed. Sept. 16, 2008) (Statement of the Managers); *see also* H.R. Rep. No. 110–730, pt. 2, at 6 (2008) (House Committee on the Judiciary). Congress did not intend, however, for the threshold question of disability to be used as a means of excluding individuals from coverage. H.R. Rep. No. 110–730, pt. 2, at 5 (2008).

In the original ADA, Congress defined "disability" as (1) a physical or mental impairment that substantially limits one or more major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 42 U.S.C. 12202(1). Congress patterned this three-part definition of "disability"—the "actual," "record of," and "regarded as" prongs—after the definition of "handicap" found in the Rehabilitation Act of 1973. *See* H.R. Rep. No. 110–730, pt. 2, at 6 (2008). By doing so, Congress intended that the relevant case law developed under the Rehabilitation Act would be generally applicable to the term "disability" as used in the ADA. H.R. Rep. No. 101–485, pt. 3, at 27 (1990); *see also* S. Rep. No. 101–116, at 21 (1989); H.R. Rep. No. 101–485, pt. 2, at 50 (1990). Congress expected that the definition of "disability" and related terms, such as "substantially limits" and "major life activity," would be interpreted under the ADA "consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act"—*i.e.,* expansively and in favor of broad coverage. Public Law 110–325, sec. 2(a)(1)–(8) and (b)(1)–(6); *see also* 154 Cong. Rec. S8840 (daily ed. Sept. 16, 2008) (Statement of the Managers) ("When Congress passed the ADA in 1990, it adopted the functional definition of disability from . . . Section 504 of the Rehabilitation Act of 1973, in part, because after 17 years of development through case law the requirements of the definition were well understood. Within this framework, with its generous and inclusive definition of disability, courts treated the determination of disability as a threshold issue but focused primarily on whether unlawful discrimination had occurred."); H.R. Rep. No. 110–730, pt. 2, at 6 & n.6 (2008) (noting that courts had interpreted the Rehabilitation Act definition "broadly to include persons with a wide range of physical and mental impairments").

That expectation was not fulfilled. Public Law 110–325, sec. 2(a)(3). The holdings of several Supreme Court cases sharply narrowed the broad scope of protection Congress originally intended under the ADA, thus eliminating protection for many individuals whom Congress intended to protect. *Id.* sec. 2(a)(4)–(7). For example, in *Sutton* v. *United Air Lines, Inc.,* 527 U.S. 471, 482 (1999), the Court ruled that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures. In *Sutton,* the Court also adopted a restrictive reading of the meaning of being "regarded as" disabled under the ADA's definition of "disability." *Id.* at 489–94. Subsequently, in *Toyota Motor Manufacturing, Kentucky, Inc.* v. *Williams,* 534 U.S. 184 (2002), the Court held that the terms "substantially" and "major" in the definition of "disability" "need to be interpreted strictly to create a demanding standard for qualifying as disabled" under the ADA, *id.* at 197, and that to be substantially limited in performing a major life activity under the ADA, "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives." *Id.* at 198.

As a result of these Supreme Court decisions, lower courts ruled in numerous cases that individuals with a range of substantially limiting impairments were not individuals with disabilities, and thus not protected by the ADA. *See* 154 Cong. Rec. S8840 (daily ed. Sept. 16, 2008) (Statement of the Managers) ("After the Court's decisions in *Sutton* that impairments must be considered in their mitigated state and in *Toyota* that there must be a demanding standard for qualifying as disabled, lower courts more often found that an individual's impairment did not constitute a disability. As a result, in too many cases, courts would never reach the question whether discrimination had occurred."). Congress concluded that these rulings imposed a greater degree of limitation and expressed a higher standard than it had originally intended, and unduly precluded many individuals from being covered under the ADA. *Id.* at S8840–41 ("Thus, some 18 years later we are faced with a situation in which physical or mental impairments that would previously have been found to constitute disabilities are not considered disabilities under the Supreme Court's narrower standard" and "[t]he resulting court decisions contribute to a legal environment in which individuals must demonstrate an inappropriately high degree of functional limitation in order to be protected from discrimination under the ADA.").

Consequently, Congress amended the ADA with the Americans with Disabilities Act Amendments Act of 2008. This legislation is the product of extensive bipartisan efforts, and the culmination of collaboration and coordination between legislators and stakeholders, including representatives of the disability, business, and education communities. *See* 154 Cong. Rec. H8294–96 (daily ed. Sept. 17, 2008) (joint statement of Reps. Steny Hoyer and Jim Sensenbrenner); *see also* 154 Cong. Rec. S8840–44 (daily ed. Sept. 16, 2008) (Statement of the Managers).

The ADA Amendments Act modified the ADA by adding a new "findings and purposes" section focusing exclusively on the restoration of Congress's intent in the ADA to broadly interpret the term "disability" to ensure expansive coverage. These new ADA Amendments Act-specific findings and purposes are meant to restore a broad scope of protection under the ADA by providing clear and enforceable standards that support the mandate to eliminate discrimination against people with disabilities. The "purposes" provisions specifically address the Supreme Court decisions that narrowed the interpretation of the term "disability," rejecting the *Toyota* strict interpretation of the terms "major" and "substantially;" the *Sutton* requirement that ameliorative mitigating measures must be considered when evaluating whether an impairment substantially limits a major life activity; and the narrowing of the third, "regarded as" prong of the definition of "disability" in *Sutton* and *School Board of Nassau County* v. *Arline,* 480 U.S. 273 (1987). In addition, the ADA Amendments Act specifically rejects the EEOC's interpretation of "substantially limited" as meaning "significantly restricted," noting that it is too demanding of a standard. *See* Public Law 110–325 sec. 2(b).

The findings and purposes section of the ADA Amendments Act "gives clear guidance to the courts and . . . [is] intend[ed] to be applied appropriately and consistently." 154 Cong. Rec. S8841 (daily ed. Sept. 16, 2008) (Statement of the Managers). The Department has amended its regulations to reflect the ADA Amendments Act, including its findings and purposes.

IV. Summary of the ADA Amendments Act of 2008

The ADA Amendments Act restores the broad application of the ADA by revising the ADA's "Findings and Purposes" section, expanding the statutory language regarding the meaning and interpretation of the definition of "disability," providing specific rules of construction for interpreting that definition, and expressly superseding the standards enunciated by the Supreme Court in *Sutton* and *Toyota* and their progeny.

First, the ADA Amendments Act deletes two findings that were in the ADA: (1) That "some 43,000,000 Americans have one or more physical or mental disabilities," and (2) that "individuals with disabilities are a discrete and insular minority." 154 Cong. Rec. S8840 (daily ed. Sept. 16, 2008) (Statement of the Managers); *see also* Public Law 110–325, sec. 3. As explained in the 2008 Senate Statement of the Managers, "[t]he [Supreme] Court treated these findings as limitations on how it construed other provisions of the ADA. This conclusion had the effect of interfering with previous judicial precedents holding that, like other civil rights statutes, the ADA must be construed broadly to effectuate its remedial purpose. Deleting these findings removes this barrier to construing and applying the definition of disability more generously." 154 Cong. Rec. S8840 (daily ed. Sept. 16, 2008) (Statement of the Managers).

Second, the ADA as amended clarifies Congress's intent that the definition of "disability" "shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter." 42 U.S.C. 12102(4)(A).

Third, the ADA as amended provides an expanded definition of what may constitute a "major life activity," within the meaning of the ADA. 42 U.S.C. 12102(2). The statute provides a non-exhaustive list of major life activities and specifically expands the category of major life activities to include the operation of major bodily functions. *Id.*

Fourth, although the amended statute retains the term "substantially limits" from the original ADA definition, Congress set forth rules of construction applicable to the meaning of substantially limited that make clear that the term must be interpreted far more broadly than in *Toyota.* 42 U.S.C. 12102(4); *see also* Public Law 110–325, sec. 2(b)(5). Congress was specifically concerned that lower courts had applied *Toyota* in a way that "created an inappropriately high level of limitation necessary to obtain coverage under the ADA." Public Law 110–325, sec. 2(b)(5). Congress sought to convey that "the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis." *Id.*

Fifth, the ADA as amended prohibits consideration of the ameliorative effects of mitigating measures such as medication, assistive technology, or reasonable modifications when determining whether an impairment constitutes a disability. 42 U.S.C. 12102(4)(E)(i). Congress added this provision to address the Supreme Court's holdings that the ameliorative effects of mitigating measures must be considered in determining whether an impairment substantially limits a major life activity. Public Law 110–325, sec. 2(b)(2). The ADA as amended also provides that impairments that are episodic or in remission are disabilities if they would substantially limit a major life activity when active. 42 U.S.C. 12102(4)(D).

Sixth, the ADA as amended makes clear that, despite confusion on the subject in some court decisions, the "regarded as" prong of the disability definition does not require the individual to demonstrate that he or she has, or is perceived to have, an impairment that substantially limits a major life activity. 42 U.S.C. 12102(3). With this clarifying language, an individual can once again establish coverage under the law by showing that he or she has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment. The ADA Amendments Act also clarifies that entities covered by the ADA are not required to provide reasonable modifications to policies, practices, or procedures for individuals who fall solely under the regarded as prong. 42 U.S.C. 12201(h).

Finally, the ADA as amended gives the Attorney General explicit authority to issue regulations implementing the definition of "disability." 42 U.S.C. 12205a.

V. Background on This Rulemaking and Public Comments Received

The Department published its Notice of Proposed Rulemaking (NPRM) proposing to amend its title II and title III ADA regulations in the **Federal Register** on January 30, 2014. 79 FR 4839 (Jan. 30, 2014). The comment period closed on March 31, 2014. The Department received a total of 53 comments on the NPRM from organizations representing persons with disabilities, organizations representing educational institutions and testing entities, individual academics, and other private individuals. The Section-by-Section analysis in the appendix to this rule addresses the comments related to specific regulatory language proposed in the NPRM.

Many commenters on the NPRM noted the value of the regulation to people with disabilities while a number of commenters on the Department's NPRM expressed concern that the Department's regulatory assessment unduly focused on individuals with learning disabilities who sought accommodations in testing or educational situations. These commenters asserted that the Department's discussion of the potential costs for testing entities or educational entities of complying with the ADA Amendments Act and this rule could be misunderstood to mean that the Department believed the changes in the definition of "disability" did not have an impact on individuals with other types of disabilities.

As discussed in the regulatory assessment, the Department believes that persons with all types of impairments, including, but not limited to, those enumerated in §§ 35.108(b) and 36.105(b), will benefit from the ability to establish coverage under the ADA as amended, and will therefore be able to challenge the denial of access to goods, services, programs, or benefits based on the existence of a disability. The Department's regulatory assessment is not a statement about the coverage of the ADA. Rather, it is a discussion of identifiable incremental costs that may arise as a result of compliance with the ADA Amendments Act and these implementing regulations. As explained in the regulatory assessment and under Section VII.A below, the Department believes that those costs are limited primarily to the context of providing reasonable modifications in higher education and testing accommodations by testing entities.

VI. Relationship of This Regulation to Revisions to the Equal Employment Opportunity Commission's ADA Title I Regulation Implementing the ADA Amendments Act of 2008

The EEOC is responsible for regulations implementing title I of the ADA addressing employment discrimination based on disability. On March 25, 2011, the EEOC published its final rule revising its title I regulation to implement the revisions to the ADA contained in the ADA Amendments Act. 76 FR 16978 (Mar. 25, 2011).[4]

Because the ADA's definition of "disability" applies to title I as well as titles II and III of the ADA, the Department has made every effort to ensure that its proposed revisions to the title II and III regulations are consistent with the provisions of the EEOC final rule. Consistency among the title I, title II, and title III rules will promote consistent application of the requirements of the ADA Amendments Act, regardless of the Federal agency responsible for enforcement or the ADA title that is enforced. Further, because most entities subject to either title II or title III are also subject to title I with respect to employment, they should already be familiar with the revisions to the definition of "disability" in the 4-year-old EEOC revised regulation. Differences in language between the title I rules and the Department's title II and title III rules are noted in the Section-by-Section analysis and are generally attributable to structural differences between the title I rule and the title II and III rules or to the fact that certain sections of the EEOC rule deal with employment-specific issues.

VII. Regulatory Process Matters

A. Executive Order 13563 and 12866—Regulatory Planning and Review

This final rule has been drafted in accordance with Executive Order 13563 of January 18, 2011, 76 FR 3821, Improving Regulation and Regulatory Review, and Executive Order 12866 of September 30, 1993, 58 FR 51735, Regulatory Planning and Review. Executive Order 13563 directs agencies, to the extent permitted by law, to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Department has determined that this rule is a "significant regulatory action" as defined by Executive Order 12866, section 3(f). The Department has determined, however, that this rule is not an economically significant regulatory action, as it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Orders 12866 and 13563.

Purpose and Need for Rule and Scope of Final Regulatory Assessment

This rule is necessary in order to incorporate into the Department's ADA regulations implementing titles II (nondiscrimination in State and local government services) and III (nondiscrimination by public accommodations and commercial facilities) the ADA Amendments Act's changes to the ADA and to provide additional guidance on how to apply those changes. The ADA Amendments Act, which took effect on January 1, 2009, was enacted in response to earlier Supreme Court decisions that significantly narrowed the application of the definition of "disability" under the ADA. *See Sutton* v. *United Air*

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[4] On September 23, 2009, the EEOC published its NPRM in the **Federal Register** proposing revisions to the title I definition of "disability." *See* 74 FR 48431. The EEOC received and reviewed more than 600 public comments in response to its NRPM. In addition, the EEOC and the Department held four joint "Town Hall Listening Sessions" throughout the United States and heard testimony from more than 60 individuals and representatives of the business/employer industry and the disability advocacy community.

Lines, Inc., 527 U.S. 471 (1999); *Toyota Motor Mfg., Kentucky, Inc.* v. *Williams*, 534 U.S. 184 (2002). The ADA Amendments Act clarifies the proper interpretation of the term "disability" in the ADA and fulfills congressional intent to restore the broad scope of the ADA by making it easier for individuals to establish that they have a disability within the meaning of the statute. *See* Public Law 110–325, sec. 2(a)(3)–(7). The Act authorizes the Attorney General to issue regulations under title II and title III of the ADA to implement sections 3 and 4 of the Act, including the rules of construction presented in section 3. 42 U.S.C. 12205a. The Department is making several revisions to the title II and title III ADA regulations that are based on specific provisions in the ADA Amendments Act.

The Department notes that the Supreme Court cases limiting the application of the definition of "disability" had the most significant impact on individuals asserting coverage under title I of the ADA with respect to employment. The legislative history of the ADA Amendments Act is replete with examples of how individuals with a range of disabilities were unable to successfully challenge alleged discriminatory actions by employers because courts found that they did not qualify as individuals with disabilities under the Supreme Court's narrow standards. *See, e.g.*, S. 154 Cong. Rec. S8840–44 (daily ed. Sept. 16, 2008) (Statement of the Managers). With respect to titles II and III, while the statutory amendments required by the ADA Amendments Act affect persons with all types of disabilities and across all titles of the ADA, Congress anticipated that the ADA Amendments Act's expanded definition would especially impact persons with learning disabilities who assert ADA rights in education and testing situations. *See* H.R. Rep. No. 110–730, pt. 1, at 10–11 (2008); *see also* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008). Congress was concerned about the number of individuals with learning disabilities who were denied reasonable modifications or testing accommodations (*e.g.*, extra exam time) because covered entities claimed these individuals did not have disabilities covered by the ADA.

In the NPRM, the Department requested public comments on whether the changes made by the ADA Amendments Act to titles II and III and that are addressed in the proposed rule would have benefits or costs in areas other than additional time for postsecondary students and national examination test takers with ADHD or learning disabilities. Those comments and the Department's response are discussed below. The Department wishes to stress that, although its economic analysis is focused on estimating costs for processing requests and providing extra time on exams as a direct result of the ADA Amendments Act, the ADA, as amended, extends coverage to individuals with the full range of disabilities and affords such individuals the full range of nondiscrimination protections under the ADA.[5] The Department is aware that the accommodation of those individuals might entail some economic costs; however, it appears that in light of the legislative history and the experience of the Department in resolving ADA claims from 1990 to the present, the above-referenced exam costs represent the only category of measurable compliance costs that the ADA Amendments Act will impose and the Department was able to assess. While other ADA Amendments Act compliance costs might also ensue, the Department has not been able to specifically identify and measure these potential costs. The Department believes, however, that any other potential costs directly resulting from restoration of coverage to individuals with disabilities who assert their rights under other ADA nondiscrimination provisions will likely be minimal and have little impact on the overall results of this analysis.

Public Comments on Regulatory Assessment and Department Responses

This section discusses public comments to the Initial RA that accompanied the NPRM, as well as changes made to the estimation of likely costs of this rule in response to those comments.

While more than 50 comments were received during the NPRM comment period, only a few of those directly addressed the assumptions, data, or methodology used in the Initial RA. The Department received comments from persons with disabilities, organizations representing educational institutions and testing entities, individual academics, and other private individuals. The preamble to this final rule provides the primary forum for substantive responses to these comments.

General and Recurring Concerns Expressed in Comments

Many commenters expressed appreciation for the proposed regulation, with several noting that the regulation would offer qualitative and quantitative benefits. Some of the quantitative benefits noted by commenters were a reduction in litigation costs as well as access to educational opportunities for persons with disabilities that would enhance employment prospects, productivity, and future earnings and investments. Qualitative benefits referenced in the comments included enhanced personal self-worth and dignity, as well as the values of equity, fairness, and full participation. Other commenters expressed concern about costs associated with implementation of the regulation.

The Department reviewed a number of comments suggesting that it underestimated the costs that postsecondary schools or national testing entities will incur to comply with the ADA Amendments Act. Commenters stated that the ADA Amendments Act will lead to a significant increase in the number of students seeking accommodations from postsecondary schools, which will lead to substantially increased direct costs (*e.g.*, the costs of providing additional exam time and other accommodations to students with disabilities) and indirect costs (*e.g.*, the costs of processing these requests, complaints to the Office for Civil Rights at the U.S. Department of Education, and lawsuits). Commenters further stated that the Department overlooked the costs that postsecondary schools will incur in providing accommodations other than additional exam time, such as tutors, note takers, auxiliary aids, e-books, etc. These commenters suggested that postsecondary schools will need to hire additional staff to manage the additional administrative burden that the ADA Amendments Act imposes.

Those comments and as well as other related comments, are specifically addressed below. But, as a threshold matter, the Department believes that the concerns predicated on the assumption of a significant rise in students seeking accommodations due to changes brought about by the ADA Amendments Act are overstated. One of the primary purposes of the ADA Amendments Act was to restore ADA coverage to a subset of individuals with disabilities who lost ADA protection as a result of a series of

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[5] A number of commenters on the NPRM expressed concern that the Department's focus on the economic impact of the ADA Amendments Act with respect to individuals with learning disabilities and in the area of education and testing might lead the public to think that the Department did not believe the ADA Amendments Act would benefit persons with other disabilities or in the full range of situations and contexts covered by titles II and III of the ADA.

Supreme Court decisions dating back to 1999.

While the Department recognizes that there has been an increase in the number of students with disabilities requesting accommodations at postsecondary institutions, much of this increase is likely not attributable to the passage of the ADA Amendments Act. Commenters and existing data suggest that, for the most part, increases in the number of students with disabilities attending college and seeking accommodations are likely related to the following factors:

- There are more diagnoses of disabilities in children overall since 1997;[6]
- More students are attending college generally;[7]
- Other laws such as the Individuals with Disabilities Education Act (IDEA) and section 504 are causing students with disabilities to be identified more widely and at a younger age;[8]
- The stigma of identifying as a person with a disability appears to have diminished since the passage of the ADA in 1990;
- Diagnoses of autism spectrum disorders among children have increased significantly since 1997, perhaps as a result of improved diagnostic tools and protocols;[9] and
- Postsecondary schools have improved their ability to accommodate students with disabilities, thus encouraging more students to seek such accommodations, and empowering students with disabilities to enroll in college and remain enrolled there.[10]

Most of the students affected by the ADA Amendments Act are students whose impairments did not clearly meet the definition of "disability" under the ADA after the series of Supreme Court decisions beginning in 1999 reduced the scope of that coverage. For instance, under the narrowed scope of coverage, some individuals with learning disabilities or ADHD may have been denied accommodations or failed to request them in the belief that such requests would be denied. As a result, the most likely impact of the ADA Amendments Act is seen in the number of students with disabilities eligible to request and receive accommodations in testing situations. There are different types of accommodations requested in testing situations, but requests for additional exam time appear to be the type of accommodation most likely to have a significant, measurable cost impact. Other types of accommodations requested in testing situations are expected to incur few to no additional costs as a result of the ADA Amendments Act and this rule. For instance, requests for accommodations such as the use of assistive technology or the need for alternative text formats were the types of accommodations that would have been granted prior to the passage of the ADA Amendments Act because students with sensory disabilities needing these types of accommodations would have been covered by the ADA even under the narrower scope of coverage arising from the application of the Supreme Court's decisions in *Toyota* and *Sutton.* As a result, those types of accommodations cannot be directly attributed to the ADA Amendments Act. In addition, other types of accommodations such as adjustments to the testing environment (*e.g.,* preferential seating or alternative locations) or the ability to have snacks or drinks would result in minimal or no costs. Therefore, the Department's examination of the costs of this rule is confined to those accommodations that individuals at postsecondary institutions or taking national examinations are most likely to request as a result of the ADA Amendments Act and that are most likely to incur measurable costs—extra time on tests and examinations.

One commenter, however, asserted that costs should be estimated for entities other than postsecondary institutions and testing entities, such as elementary and secondary schools, courthouses, etc. Certain concerns related to elementary and secondary schools are addressed below, but the Department found no direct evidence to indicate that institutions other than postsecondary institutions and testing entities will incur any significant economic impact as a result of accommodating individuals now covered under the ADA after passage of the ADA Amendments Act. Even after conducting further research, the Department was unable to identify any accommodations that would result in compliance costs that could be specifically attributable to the ADA Amendments Act other than those identified and measured in this analysis—*i.e.,* accommodations for extra time on exams. While the Department anticipates that other individuals with disabilities will benefit from the ADA Amendments Act, no specific subsets of individuals with disabilities or specific accommodations were identified. Accordingly, it appears that the economic impact of ADA Amendments Act compliance for entities other than postsecondary schools and testing entities will not significantly affect the overall economic impact of the rule, and thus those costs are not analyzed here.

One commenter cited the 2013–2014 Institutional Disability Access Management Strategic Plan at Cornell University[11] as an example of the kind of careful planning done by postsecondary institutions to address the needs of students with disabilities as a basis for determining that the costs of implementing the ADA Amendments Act will be very high. This document focuses almost exclusively on initiatives taken in furtherance of ADA compliance generally, rather than compliance with the ADA Amendments Act specifically. Further, this document discloses that Cornell University annually updates its plans and policies toward individuals with disabilities. Nothing in this document indicates that Cornell University is absorbing high costs as a result of such ongoing updates, or that the ADA Amendments Act has presented Cornell University with an unusually high burden, over and above the ordinary obligations that the ADA itself imposes. It is true that this document reflects careful, comprehensive, and possibly costly planning on the behalf of students with disabilities, but the expense inherent in such planning is attributable to the overall requirements of the ADA itself, rather than the implementation of the ADA Amendments Act.

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[6] Coleen A. Boyle, *et al., Trends in the Prevalence of Developmental Disabilities in US Children, 1997–2008,* 127 Pediatrics 1034 (2011), *available at http://pediatrics.aappublications.org/content/pediatrics/early/2011/05/19/peds.2010-2989.full.pdf* (last visited April 22, 2016); *see also* Matt Krupnick, *Colleges respond to growing ranks of learning disabled,* The Hechinger Report (Feb. 13, 2014), *available at http://hechingerreport.org/colleges-respond-to-growing-ranks-of-learning-disabled/* (last visited Feb. 3, 2016).

[7] U.S. Department of Education, National Center for Education Statistics, *Fast Facts: Enrollment, available at http://nces.ed.gov/fastfacts/display.asp?id=98* (last visited Feb. 3, 2016).

[8] *See* Stephen B. Thomas, *College Students and Disability Law,* 33 J. Special Ed. 248 (2000), *available at http://www.ldonline.org/article/6082/* (last visited Apr. 22, 2016).

[9] Centers for Disease Control and Prevention, *Prevalence of Autism Spectrum Disorder Among Children Aged 8 Years—Autism and Developmental Disabilities Monitoring Network, 11 Sites, United States, 2010,* MMWR 2014; 63 (SS–02), *available at http://www.cdc.gov/mmwr/pdf/ss/ss6302.pdf* (last visited April 22, 2016).

[10] *See* Justin Pope, *Students with Autism, Other Disabilities Have More College Options Than Ever Before, Huff Post Impact, available at http://www.huffingtonpost.com/2013/09/16/autism-college-options_n_3934583.html* (Sept. 16, 2013) (last visited Feb. 3, 2016).

[11] Cornell University—Disability Information, *Institutional Disability Access Management Strategic Plan for Cornell University, July 1, 2013–June 30, 2014, available at http://disability.cornell.edu/docs/2013-2014-disability-strategic-plan.pdf* (last visited Feb. 3, 2016).

Comments Regarding the ADA and Related Laws

Many of the commenters' points regarding increased costs appear to apply to concerns about the costs of complying with the ADA generally and not to costs related to expanded coverage due to the ADA Amendments Act. It is true that in some cases the costs of accommodating some students with more severe mobility and sensory disabilities could be significant, but these students were clearly covered even under the restrictive standards set forth by *Sutton* and *Toyota,* and accordingly, such costs cannot be attributed to the implementation of the ADA Amendments Act. One commenter expressed a concern that there has been an increase in requests for "exotic or untrained animals as service or emotional support animals" in student housing provided by postsecondary institutions. The Department notes that neither "exotic animals" nor "emotional support animals" qualify as service animals under the existing regulations implementing titles II and III of the ADA and thus, any costs related to allowing such animals are not due to the application of the requirements of this rule.[12] And, similar to the observation noted above, the vast majority of students who use service animals as defined under the ADA have disabilities that would have been covered prior to passage of the ADA Amendments Act, even under the Supreme Court's more narrow application of the definition of "disability." So, although such costs may be measurable, they cannot fairly be attributed to the implementation of the ADA Amendments Act.

Comments Regarding the Costs for the Adjustment of Existing Policies

The Department acknowledges that postsecondary schools and national testing entities will incur some costs to update their written policies and training procedures to ensure that the definition of "disability" is interpreted in accordance with the requirements of the ADA Amendments Act, but has found no evidence to indicate that such costs would be high. The Department also notes that even prior to passage of the ADA Amendments Act, many postsecondary schools had policies in place that were broader and more comprehensive than would have been required under the more restrictive coverage set forth in *Sutton* and *Toyota.* As a result, their policies and procedures may require few, if any, updates to conform to the ADA Amendments Act and the revised regulations. The Department has found no evidence to suggest that the changes required by the ADA Amendments Act have placed or will place a significant burden upon the ongoing processes of evaluating and updating policies that already exist at postsecondary schools or with national testing entities. Nevertheless, the Department has attempted in this Final RA to quantify the cost of training staff members and updating policies as a result of the changes that the ADA Amendments Act final rule may require.

Some commenters argued that the Department's estimate of a one-time cost of $500 per institution to change policies and procedures in compliance with the ADA Amendments Act was too low. Instead, one commenter proposed an estimated one-time cost of $2,500 per institution, and another commenter suggested an estimated one-time cost of $5,000 per institution for the first year's training costs. The underlying data and methodology to support these estimates were not provided by these commenters.

The Department has found no data to substantiate the claims that the cost of changing existing policies and training procedures to comply with the ADA Amendments Act will be $2,500 or $5,000 per institution. The commenters proposing those costs did not provide any detailed evidence or arguments in support of such costs, and the Department's research found no evidence to indicate that any institutions have incurred training or policy revision costs of that magnitude since the ADA Amendments Act became effective in 2009. The commenter suggesting a $5,000 cost cites to one institution's disability access plan to suggest some of the types of costs that might be incurred. The referenced document, however, does not provide specific dollar figures and is not ADA Amendments Act specific. Therefore, the Department does not believe that the commenter's projected cost increases are correct because, as discussed above, the programmatic concerns identified in this document pertained to ADA compliance as a whole, but not with changes to the ADA created by the ADA Amendments Act specifically. The Department acknowledges that the absence of evidence of such costs, however, is not necessarily conclusive that some costs do not or will not exist. Nevertheless, the Department believes that, had postsecondary schools incurred $2,500 to $5,000 in such compliance costs since 2009 or if they expected to incur such costs going forward, some indicia of these costs would be readily apparent.

Because no relevant supporting information regarding the commenters' estimates was provided, the Department conducted additional independent research and interviewed representatives at two postsecondary institutions to determine whether any additional formal or informal training had been needed to understand the implications of the ADA Amendments Act (and make adjustments to existing policies and procedures to conform to the Act's requirements). One of those two institutions stated that no additional training had been needed. The second institution said that additional training had been provided during meetings with staff. Approximately two hours per staff member (*i.e.,* two hours per meeting) had been dedicated to this training. Approximately two part-time staff and six graduate students (working part time) received this training. In addition, the staff member providing the training had to attend a one-day conference to receive the information to pass along to the other staff. The Department conducted research to determine the costs of attending such a conference and receiving training on the changes to the law resulting from the ADA Amendments Act. Based on this independent research and feedback from representatives of two postsecondary institutions, the Department increased its estimate for one-time training costs from approximately $500 to $1,371 (*see* below for greater details on how the $1,371 was derived).

Comments Regarding the Costs of Additional Staff Time for the Administration of the Rule

Some commenters argued that the rule will lead to a significant increase in postsecondary institution accessibility support staff time devoted to disability accommodation issues, perhaps even requiring postsecondary institutions to hire additional personnel. One commenter representing higher educational institutions estimated that each affected institution would be required to hire one new full-time staff member, at $40,000 per year, to address increased student requests. This commenter cited a study that indicated that the mean number of staff who assist students with disabilities is four per campus. The Department questions the commenter's estimate that each affected institution would have to increase their staff by one full-time staff person, or approximately 25 percent of the mean entire staff, to address the incremental changes created by the ADA Amendments Act. The general increase in accommodation requests is likely attributable to a number of other factors not related to the ADA Amendments Act, including higher enrollment of students with disabilities. While there will likely be an incremental increase in the number of testing accommodations requested and granted as a direct result of the ADA Amendments Act, this incremental increase is unlikely to be the driving factor for hiring additional staff.

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[12] As in other types of housing environments, students who wish to have emotional support animals in housing provided by their place of education may make those requests under the Fair Housing Act, 42 U.S.C. 3601 *et seq.,* and not the ADA.

Similarly, some commenters argued that the Department needed to incorporate estimates of the additional administrative time needed to review and administer additional requests for testing accommodations for both postsecondary and national testing entities. To address these concerns, the Department contacted several universities and testing entities, but received responses from only one school and one testing entity, and those responses were inconclusive. The postsecondary school said that there has been no noticeable increase in applications for accommodations since the passage of the ADA Amendments Act, but the testing entity stated that it has detected a large increase in requests for additional testing time since the passage of the ADA Amendments Act. In light of the uncertainty regarding any potential additional staff time needed to review additional requests for accommodations, the Department has made several assumptions based on research and discussions with subject matter experts and impacted entities so as to incorporate estimated costs for this item. This information is presented further below.

Comments Regarding the Costs of Additional Disputes

Some commenters argued that the ADA Amendments Act would lead to increased litigation and internal disputes against institutions, as the scope of potential litigants would expand due to the increase in individuals covered by the ADA as a result of the passage of the ADA Amendments Act. Other commenters disagreed, stating that the new regulation would reduce the volume of complaints and litigation and streamline outstanding complaints and litigation due to increased consistency and predictability in judicial interpretation and executive enforcement. The Department does not agree with the commenters who asserted that the impact of the ADA Amendments Act will lead to an increase in litigation and disputes. The ADA Amendments Act clarified several contentious or uncertain aspects of the ADA, and thus may have decreased the overall amount of ADA litigation by reducing ambiguities in the law. However, assessing the impact of covered entities' failures to comply (or alleged failures to comply) with the requirements of the ADA, as amended, and the legal challenges that may result from compliance failures, are not properly within the ambit of the Final RA, nor do we have any relevant information that would assist in an analysis of such issues even if it they were appropriate to include in the Final RA.

Comments Regarding the Computation of Costs for Additional Examinations and Testing

One commenter stated that the Department placed too much emphasis on the cost of proctor supervision when assessing the cost of extra exam time in postsecondary institutions. The commenter posited that many tests are administered electronically; accordingly, the costs of those tests are appropriately based on the cost of "seat time" and not the cost of proctor supervision. Unfortunately, no commenter provided a description of what the additional costs per student might be in such circumstances, nor did any commenter explain how such costs could be computed. The Department contacted several postsecondary institutions and testing entities for approximations of seat time costs, but did not receive any relevant information.

Two commenters noted that for some long national examinations, additional testing time would necessitate the provision of an additional testing day that would increase costs substantially. This potential cost was not estimated in the Initial RA because research indicated that prior to the passage of the ADA Amendments Act, national examination institutions were already accommodating individuals who required additional time because of disabilities already explicitly covered by the ADA. As a result, testing entities were already providing an additional testing day where necessary. Therefore, any individuals who would now request additional time on national exams lasting six hours or more as a direct result of the ADA Amendments Act would be accommodated alongside those individuals who would have been covered prior to the ADA Amendments Act, and any potential costs would likely be minimal. Despite this conclusion, the Department has nonetheless conducted a sensitivity analysis to assess these potential costs with the assumption that testing entities were not already providing an additional testing day to accommodate certain individuals with disabilities. Because an additional testing day for these examinations was likely already provided prior to passage of the ADA Amendments Act, the Department continues to believe that the costs of accommodating any additional students who are now seeking additional exam time as a direct result of the ADA Amendments Act will be minimal. As a result, the sensitivity analysis the Department has conducted likely overestimates these potential costs. Further information on the potential range of these costs can be found below.

Comments Regarding the Estimate of ADHD Prevalence Among Postsecondary Students

Several commenters questioned the Department's approach of reducing the portion of students with ADHD who would be impacted by the ADA Amendments Act. In the Initial RA, the Department had assumed based on some available research that 30 percent of those who self-identify as having ADHD as their primary disability would not need additional testing time because they would not meet the clinical definition of the disability. One commenter raised concern about presenting a specific percentage of students with ADHD who would not meet that clinical definition, because that number might inadvertently become a benchmark for postsecondary institutions and national testing entities to deny accommodations to a similar percentage of applicants requesting additional exam time because of their ADHD. The Department did not intend for this percentage to establish a benchmark. Covered entities should continue to evaluate requests for additional exam time by all individuals with disabilities on an individualized basis. In direct response to these concerns, the Department has decided not to reduce the number of individuals with ADHD who could now receive testing accommodations as a direct result of the ADA Amendments Act.

Comments Regarding the Economic Impact of the Rule on Industries

A commenter representing institutions of higher education stated that the rule would have a significant impact on higher education as an industry, such that the rule should be considered "economically significant." For the reasons indicated throughout the Final RA, however, the Department does not believe that this commenter's points were persuasive. Based on the Department's own research and evaluation, it is convinced that the cost of ADA Amendments Act compliance will be far less than $100 million dollars in any given year.

The commenter stated that the Department erred in its analysis by focusing primarily on college students with learning disabilities or ADHD and did not factor in potential costs related to students with other impairments including depression, schizophrenia, obsessive compulsive disorder, traumatic brain injuries, post-traumatic stress disorder, visual impairments not rising to the level of blindness, anxiety, autism, food allergies, or transitory impairments. Prior to passage of the ADA Amendments Act, higher educational institutions already were incurring costs to accommodate students with the above-referenced impairments that constituted disabilities. These costs are not attributable to this rulemaking and thus not analyzed as such. For the relatively small number of students with the above-referenced disabilities who might not have been covered prior to the passage of the ADA Amendments Act, the Department was unable to specifically identify or measure any potential costs that postsecondary institutions would incur in accommodating these students.

The commenter also stated that the Department's Initial RA should have considered the costs of academic accommodations other than extended testing time, such as "note takers, tutors, technology-based auxiliary aids, electronic versions of text-books and class materials, and other accommodations and aids," as well as "significant costs resulting from accommodation requests outside the classroom context, such as those involving residence halls, food services or athletics." The Department notes that, as with reasonable modifications and testing accommodations required prior to the ADA Amendments Act, the accommodations or auxiliary aids or services described by the commenter were being provided before the passage of the ADA Amendments Act and will not entail new costs specifically attributable to the ADA Amendments Act.

Comments Regarding ADA/IDEA Concerns

Several commenters addressed the possibility that the expanded definition of "disability" could result in more cases arising under the ADA, rather than under the IDEA, in elementary and secondary schools. An association focusing on children with learning disabilities noted that students who manage their disabilities well often find that school districts challenge their IDEA claims of disability, but that such claims may meet with more success under the ADA or section 504 of the Rehabilitation Act. One commenter, whose comments were endorsed by several other groups, noted that particular subsets of children may be eligible for benefits under the ADA but not under the IDEA. These include students with episodic conditions, mitigated conditions, and conditions such as diabetes and seizure impairments that may require maintenance support, such as diet or medications. A national association of kindergarten through twelfth-grade educators indicated that, increasingly, in its view, some parents are more likely to seek school-related modifications for their child under the ADA, rather than the IDEA. This commenter suggested, accordingly, that ADA litigation would increase once parents become aware of the application of a broader definition of "disability" due to the ADA Amendments Act.

The Department recognizes that the definition of "disability" under the IDEA is different than that under the ADA.[13] While many students will be covered by both statutes, some students covered by the ADA will not be eligible for special education services under the IDEA; however, such students are covered by section 504 of the Rehabilitation Act and are entitled to a "free appropriate public education" (FAPE) under the Department of Education's section 504 regulation. The Department acknowledges commenters' views that some parents may assert rights for their elementary, middle, and high school students under the ADA due to the expanded definition of "disability." However, the Department believes that the overall number of additional requests for reasonable modifications by elementary and secondary students that can be attributed to the ADA Amendments Act will be small and that any resulting economic impact is likely to be extremely limited. Students with ADHD and learning disabilities who already are covered by section 504 and, in many instances, the IDEA as well, are entitled to needed special education, related aids and services, modifications or auxiliary aids or services under those statutes. Further, prior to filing suit under the ADA, any student that is covered under both the ADA and the IDEA must exhaust administrative remedies under the IDEA if seeking a remedy that is available under that statute. Thus, while the ADA is critical to ensuring that students with disabilities have a full and equal opportunity to participate in and benefit from public education, when viewed in concert with the protections already afforded by section 504 and the IDEA, the economic impact of implementing the ADA Amendments Act in K–12 schools will be minimal. The Department also notes that none of these commenters provided any data demonstrating that elementary and secondary schools have incurred additional costs due to the passage of the ADA Amendments Act more than six years ago.

Comments Regarding Possible Fraudulent Claims of Disability

A number of commenters stated that the rule might encourage some people without learning disabilities to claim that they have learning disabilities, so that they can take advantage of extra exam time. The Department has not identified any study suggesting that the release of this rule—more than six years after the effective date of the ADA Amendments Act—likely will motivate a spike in false claims for students seeking extra time on examinations. While individuals with learning disabilities previously denied accommodations may be motivated to seek recognition of their disabilities under this rule, because it may offer an improved opportunity for consideration of their unmet needs, the Department does not believe that individuals who might feign disabilities in pursuit of extra time would modify their behavior as a result of this rule; to the contrary, the motivation and opportunity to feign such disabilities would have existed prior to the passage of the ADA Amendments Act. The Department acknowledges that there will always be some individuals who seek to take advantage of rules that extend benefits to particular classes of individuals. However, the Department has determined that the costs of such fraudulent behavior cannot readily be computed. It appears that there is no generally accepted metric for determining how many claims of disability are fraudulent, or how the cost of such fraudulent activity should be computed. And, the Department found no evidence to indicate that the rate of fraudulent claims of disability has increased since the implementation of the ADA Amendments Act in 2009. It should be emphasized that individuals seeking accommodations for their disabilities in testing situations under the ADA will still undergo an individualized assessment to determine whether they have disabilities covered by the statute. Extended exam time is an accepted reasonable modification or testing accommodation under the ADA for persons whose disabilities inhibit their ability to complete timed tests. Because the Department is not able to identify or measure an increase in fraudulent claims associated with this rule, those potential costs are not reflected in the economic analysis.

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[13] Under the IDEA, a "child with a disability" is a child "with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities [and] who, by reason thereof, needs special education and related services." 20 U.S.C. 1401(3). The IDEA regulation elaborates on each disability category used in the statute. *See* 34 CFR 300.8.

Final Results of the Primary Analysis

This section presents the calculations used to estimate the total costs resulting from the revisions to the title II and title III regulations to incorporate the changes made by the ADA Amendments Act. Costs are first presented for postsecondary institutions and then for national testing entities. For a more detailed explanation of the Department's methodology and data used to calculate these costs, please refer to relevant sections in the Final RA. The Final RA is available on Department's Web site at *www.ada.gov.*

As explained above, total costs to postsecondary institutions will include three components:

- One-time cost of training staff on relevant impact of ADA Amendments Act;
- Annual cost of processing additional accommodation requests for extra exam time made as a direct result of the ADA Amendments Act; and
- Annual cost of proctoring additional time on exams as a direct result of the ADA Amendments Act.

To calculate the annual costs to all postsecondary institutions for processing these additional accommodation requests and proctoring additional exam time as a direct result of the ADA Amendments Act, the potential number of students who could request and receive these accommodations needs to be calculated. Calculations for the three costs listed above plus the number of students who are eligible to receive and likely to request accommodations for extra exam time as a direct result of the ADA Amendments Act are presented below.

The annual one-time training cost for all postsecondary institutions is presented in Table 1 below. The methodology used to calculate this cost is explained further in Section 2.1 of the Final RA, and the sources for the data used are provided in Section 3.1.1 of the Final RA.

TABLE 1—CALCULATION OF ONE-TIME TRAINING COSTS FOR POSTSECONDARY INSTITUTIONS

Variable	Value
Number of Postsecondary Institutions	7,234
One-Time Cost of Training on the Impacts of ADA Amendments Act per Institution	1,371
One-Time Training Cost for Postsecondary Institutions	9,917,633

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

The number of additional eligible students likely to request and receive extra time on exams at postsecondary institutions as a direct result of the ADA Amendments Act is calculated in Tables 2 and 3 below. The methodology used for this calculation is explained further in Section 2.2 of the Final RA, and the sources for the data used are provided in Section 3.1.2 of the Final RA.

TABLE 2—CALCULATION OF NUMBER OF STUDENTS WHO ARE ELIGIBLE TO RECEIVE ACCOMMODATIONS FOR EXTRA EXAM TIME AT POSTSECONDARY INSTITUTIONS

[First year]

Row #	Variable	Value	Source
1	Total Number of Postsecondary Students	20,486,000	See Table 9 of the Final RA.
2	Percentage of Postsecondary Students with a Learning Disability or ADHD	2.96%	See Table 11 of the Final RA.
3	Total Postsecondary Students with a Learning Disability or ADHD	606,386	Calculation (Multiply Row 1 and Row 2).
4	Percentage of Students with Learning Disabilities or ADHD Already Receiving Accommodations for Extra Exam Time Prior to Passage of the ADA Amendments Act.	51.1%	See Table 12 of the Final RA.
5	Total Number of Students with Learning Disabilities or ADHD who were Requesting Accommodations for Extra Exam Time Prior to the ADA Amendments Act.	309,863	Calculation (Multiply Row 3 and Row 4).
6	Percentage of Students with Learning Disabilities or ADHD Not Receiving Accommodations for Extra Exam Time Prior to Passage ADA Amendments Act.	48.9%	See Table 12 of the Final RA.
7	Total Eligible Students who Could Potentially Request and Receive Accommodations for Extra Exam Time as a Direct Result of the ADA Amendments Act.	296,523	Calculation (Multiply Row 3 and Row 6).

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

TABLE 3—CALCULATION OF NUMBER OF STUDENTS WHO ARE ELIGIBLE TO RECEIVE AND LIKELY TO REQUEST ACCOMMODATIONS FOR EXTRA EXAM TIME AT POSTSECONDARY INSTITUTIONS

[First year]

Row #	Variable	Low value	Med value	High value	Source
1	Total Eligible Students who Could Potentially Request and Receive Accommodations for Extra Exam Time as a Direct Result of the ADA Amendments Act.	296,523	296,523	296,523	See Table 2 above.
2	Percentage of Eligible Students Who Were Not Previously Receiving Accommodations for Extra Exam Time Prior to Passage of the ADA Amendments Act Who are Now Likely to Request and Receive this Accommodation.	50%	70%	90%	See Table 13 of the Final RA.
3	Number of Students who are Eligible to Receive and Likely to Request Accommodations for Extra Exam Time as a Direct Result of the ADA Amendments Act.	148,261	207,566	266,870	Calculation (Multiply Row 1 and Row 2).

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

Table 4 below presents the calculations of the annual cost to postsecondary institutions for processing new accommodation requests for extra exam time. These requests are in addition to the ones currently received and processed by postsecondary institutions that are not being made as a direct result of the ADA Amendments Act. Costs depend on the number of students who will now be eligible to request and receive an accommodation for extra time on an exam as a direct result of the ADA Amendments Act revisions. The methodology used to calculate this cost is explained further in Section 2.3 of the Final RA, and the sources for the data used are provided in Section 3.1.3 of the Final RA.

TABLE 4—CALCULATION OF ANNUAL COST TO POSTSECONDARY INSTITUTIONS FOR PROCESSING ADDITIONAL ACCOMMODATION REQUESTS FOR EXTRA EXAM TIME

[First year]

Variable	Low value	Med value	High value
Number of Students who are Eligible to Receive and Likely to Request Accommodations for Extra Exam Time	148,261	207,566	266,870
Number of Staff Hours to Process each Accommodation Request	2	2	2
Total Staff Hours to Process New Requests	296,523	415,132	533,741
Staff Hourly Wage Rate for Processing Accommodation Requests	$24.91	$24.91	$24.91
Annual Cost to Postsecondary Institutions for Processing Additional Accommodation Requests for Extra Exam Time	$7,387,118	$10,341,966	$13,296,813

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

Tables 5 and 6 calculate the annual costs to postsecondary institutions for proctoring additional time on exams requested by eligible students as a direct result of the ADA Amendments Act. The methodology used to calculate this cost is explained further in Section 2.4 of the Final RA, and the sources for the data used are provided in Section 3.1.4 of the Final RA.

TABLE 5—CALCULATION OF ANNUAL COST TO POSTSECONDARY INSTITUTIONS FOR PROCTORING EXTRA TIME ON EXAMS, PER STUDENT

[First year]

Variable	Value
Average Length of an Exam at a Postsecondary Institution in Hours	1.5
Average Additional Time Requested, as a Percentage of Total Exam Time	75%
Average Amount of Extra Time per Exam in Hours	1.13
Average Number of Exams per Class	3
Average Number of Classes per Year	8
Average Number of Exams per Student	24
Average Annual Additional Exam Time per Student in Hours	27
Average Proctor to Student Ratio	0.11
Average Hourly Wage of Exam Proctor	$12.90
Annual Cost for Proctoring Additional Time on Exams per Student	$36.67

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

TABLE 6—TOTAL ANNUAL COST TO POSTSECONDARY INSTITUTIONS FOR PROCTORING EXTRA TIME ON EXAMS

[First year]

Variable	Low	Med	High
Annual Cost for Proctoring Additional Time on Exams per Student	$36.67	$36.67	$36.67
Number of Students who are Eligible to Receive and Likely to Request Accommodations for Extra Exam Time	148,261	207,566	266,870
Annual Cost to Postsecondary Institutions for Proctoring Extra Time on Exams	$5,437,419	$7,612,387	$9,787,355

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

Just as with postsecondary institutions, the costs to national testing entities from the revisions to the ADA Amendments Act will include three components:

- One-time cost of training staff on relevant impact of ADA Amendments Act;
- Annual cost of processing additional accommodation requests for extra exam time made as a direct result of the ADA Amendments Act; and
- Annual cost of proctoring additional time on exams as a direct result of the ADA Amendments Act.

The annual costs of processing additional accommodation requests and proctoring the extra exam time depends on the number of test takers who will request accommodations for extra exam time as a direct result of the ADA Amendments Act. Calculations for the three costs listed above plus the number of test takers who are eligible to receive and likely to request accommodations of extra exam time as a direct result of the ADA Amendments Act are presented below.

The annual one-time training cost for all national testing entities is presented in Table 7 below. The methodology used to calculate this cost is explained further in Section 2.1 of the Final RA, and the sources for the data used are provided in Section 3.2.1 of the Final RA.

TABLE 7—CALCULATION OF ONE-TIME TRAINING COSTS FOR NATIONAL TESTING ENTITIES

Variable	Value
Number of National Testing Entities	1,397
One-Time Cost of Training on the Impacts of ADA Amendments Act per Institution	$1,371
One-Time Training Cost for National Testing Entities	$1,915,252

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

The number of test takers who are now eligible to receive and likely to request extra time on national exams is calculated in Tables 8 and 9 below. The methodology used to calculate this number is explained further in Section 2.2 of the Final RA, and the sources for the data used are provided in Section 3.2.2 of the Final RA.

TABLE 8—CALCULATION OF NUMBER OF TEST TAKERS WHO ARE ELIGIBLE TO RECEIVE ACCOMMODATIONS FOR EXTRA EXAM TIME FROM NATIONAL TESTING ENTITIES

[First year]

Row #	Variable	Value	Source
1	Total Number of Test Takers	10,450,539	See Table 23 of the Final RA.
2	Percentage of Test Takers with a Learning Disability or ADHD *	2.96%	See Table 11 of the Final RA.
3	Total Test Takers with a Learning Disability or ADHD	309,336	Calculation (Multiply Row 1 and Row 2).
4	Percentage of Test Takers with Learning Disabilities or ADHD Already Receiving Accommodations for Extra Exam Time Prior to Passage of the ADA Amendments Act.*	51.1%	See Table 12 of the Final RA.
5	Total Number of Test Takers with Learning Disabilities or ADHD who were Requesting Accommodations for Extra Exam Time Prior to the ADA Amendments Act.	158,071	Calculation (Multiply Row 3 and Row 4).
6	Percentage of Test Takers with Learning Disabilities or ADHD Not Receiving Accommodations for Extra Exam Time Prior to Passage ADA Amendments Act.*	48.9%	See Table 12 of the Final RA.
7	Total Eligible Test Takers who Could Potentially Request and Receive Accommodations for Extra Exam Time as a Direct Result of the ADA Amendments Act.	151,265	Calculation (Multiply Row 3 and Row 6).

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

* For these assumptions, the Final RA assumes the same values for national test takers as found for postsecondary students, since no specific data for national examinations was found and many national exams are designed for students or recent graduates.

TABLE 9—CALCULATION OF NUMBER OF TEST TAKERS WHO ARE ELIGIBLE TO RECEIVE AND LIKELY TO REQUEST ACCOMMODATIONS FOR EXTRA EXAM TIME FROM NATIONAL TESTING ENTITIES

Row #	Variable	Low	Med	High	Source
1	Total Eligible Test Takers who Could Potentially Request and Receive Accommodations for Extra Exam Time as a Direct Result of the ADA Amendments Act.	151,265	151,265	151,265	See Table 8 above.
2	Percentage of Eligible Test Takers Who Were Not Previously Receiving Accommodations for Extra Exam Time Prior to Passage of the ADA Amendments Act Who are Now Likely to Request and Receive this Accommodation.	50%	70%	90%	See Table 13 of the Final RA.
3	Number of Test Takers who are Eligible to Receive and Likely to Request Accommodations for Extra Exam Time as a Direct Result of the ADA Amendments Act.	75,633	105,886	136,139	Calculation (Multiply Row 1 and Row 2).

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

Table 10 illustrates the calculations of the annual cost to national testing entities for processing additional accommodation requests for extra exam time made as a direct result of the ADA Amendments Act. The methodology used to calculate this cost is explained further in Section 2.3 of the Final RA, and the sources for the data used are provided in Section 3.2.3 of the Final RA.

TABLE 10—CALCULATION OF ANNUAL COST TO NATIONAL TESTING ENTITIES FOR PROCESSING ADDITIONAL ACCOMMODATION REQUESTS FOR EXTRA EXAM TIME

[First year]

Variable	Low value	Med value	High value
Number of Test Takers who are Eligible to Receive and Likely to Request Accommodations for Extra Exam Time	75,633	105,886	136,139
Number of Staff Hours to Process each Accommodation Request	2	2	2
Total Staff Hours to Process Additional Accommodation Requests for Extra Exam Time	151,265	211,771	272,278
Staff Hourly Wage Rate for Processing Accommodation Requests	$24.91	$24.91	$24.91
Annual Cost to National Testing Entities for Processing Additional Accommodation Requests for Extra Exam Time	$3,768,396	$5,275,755	$6,783,113

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

Finally, Tables 11 and 12 calculate the annual costs to national testing entities for allowing test takers to receive additional time on exams. Again, the cost here may be calculated as the opportunity cost of the seat occupied by the test taker for the additional hours of testing. However, because the seat cost per test taker was not available for this Final RA analysis, the additional time spent by a test proctor to oversee the exam is used as a proxy for the cost. The methodology used to calculate this cost is explained further in Section 2.4 of the Final RA, and the sources for the data used are provided in Section 3.2.4 of the Final RA.

TABLE 11—CALCULATION OF ANNUAL COST TO NATIONAL TESTING ENTITIES FOR PROCTORING EXTRA TIME ON EXAMS, PER TEST TAKER

[First year]

Variable	Value
Average Length of a National Exam in Hours	4.11
Average Extra Time Requested, as a Percentage of Total Exam Time	75%
Average Amount of Extra Time per Exam in Hours	3.09
Average Number of Exams per Test Taker per Year	1
Average Annual Extra Exam Time per Test Taker in Hours	3.09
Average Proctor-to-Test-Taker Ratio	1
Average Hourly Wage of Exam Proctor	$12.90
Cost to National Testing Entities for Proctoring Extra Time on Exams per Test Taker	$39.81

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

TABLE 12—TOTAL ANNUAL COST TO NATIONAL TESTING ENTITIES FOR PROCTORING EXTRA TIME ON EXAMS

[First year]

Variable	Low value	Med value	High value
Cost to National Testing Entities for Proctoring Extra Time on Exams per Test Taker	$39.81	$39.81	$39.81
Number of Test Takers who are Eligible to Receive and Likely to Request Accommodations for Extra Exam Time each year	75,633	105,886	136,139

TABLE 12—TOTAL ANNUAL COST TO NATIONAL TESTING ENTITIES FOR PROCTORING EXTRA TIME ON EXAMS—Continued

[First year]

Variable	Low value	Med value	High value
Annual Cost to National Testing Entities for Proctoring Extra Time on Exams	$3,011,096	$4,215,534	$5,419,973

Note: Due to rounding, totals may not equate exactly to the product of the inputs provided in the table.

Based on the calculations provided above, total costs to society for implementing the ADA Amendments Act revisions into the title II and title III regulations will range between $31.4 million and $47.1 million in the first year. The first year of costs will be higher than all subsequent years because the first year includes the one-time cost of training. Note that even the high end of this first-year cost range is well below the $100 million mark that signifies an ''economically significant'' regulation. The breakdown of total costs by entity is provided in Table 13 below.

TABLE 13—TOTAL COSTS FIRST YEAR (2016) IN PRIMARY ANALYSIS, NON-DISCOUNTED

[$ millions]

Cost category	Low value	Med value	High value
Postsecondary Institutions: ANNUAL Total Costs of Processing Additional Requests and Proctoring Extra Exam Time	$12.8	$18.0	$23.1
Postsecondary Institutions: ONE–TIME Cost for Additional Training at Institutions	9.9	9.9	9.9
National Exams: ANNUAL Total Costs of Processing Additional Requests and Proctoring Extra Exam Time	6.8	9.5	12.2
National Exams: ONE–TIME Cost for Additional Training at Institutions	1.9	1.9	1.9
Total	31.4	39.3	47.1

Note: Due to rounding, totals may not equate exactly to the sum of the inputs provided in the table.

Taking these costs over the next 10 years and discounting to present value terms at a rate of 7 percent, the total cost of implementing the ADA Amendments Act revisions is approximately $214.2 million over 10 years, as shown in Table 14 below.

TABLE 14—TOTAL COSTS OVER 10 YEARS, PRIMARY ANALYSIS

Total discounted value ($ millions)	Annualized estimate ($ millions)	Year dollar	Discount rate (percent)	Period covered
$214.2	$28.6	2015	7	2016–2025
$243.6	26.3	2015	3	2016–2025

Potential Additional Costs to National Testing Entities

The ADA Amendments Act revisions will allow eligible individuals with disabilities to receive additional time on exams, both for course-work exams at postsecondary institutions and standardized national examinations. Some national examinations are long and can last up to eight hours per test. Thus, when test takers request additional time on these longer exams, such requests will inevitably push the exam into an additional day.

As commenters pointed out in response to the Initial RA, there are costs associated with providing exams on an additional day. While there is no data to predict which exams will extend to an additional day, especially given that specific accommodations are determined individually, this Final RA assumes that exams that normally would take six hours or more to administer and be scheduled for one day may require an additional day of testing if the test taker seeks more time as an accommodation. To quantify the total costs of providing an additional day of testing for those individuals who would not previously have received this additional time, prior to the passage of the ADA Amendments Act, the following two costs are quantified:

Exam Revision Costs

While it appears that many national testing entities do not revise the content of exams that span an additional day, the exam format and materials can be affected by such an extension. For instance, computer-based exams are programmed to span a certain amount of time, allowing for timed break periods throughout. When more time is provided to take the exam, the exam must be reprogrammed to span the new amount of time, with planned breaks for the test taker. For paper-based exams, test booklets are often reprinted to allow one set of questions for one day of testing, and another set for the extra day of testing. This form of printing prevents test takers from going home and looking up the answers for the next set of questions.

Room Rental Cost

Exams are delivered in different settings depending on the type of national exam. Some exams are delivered at testing centers where different types of exams are administered at once in the same room. In this case, the cost of an extra day of testing could be captured by the seat cost per test taker. Other exams are delivered to test takers exclusively taking that exam, and those exams are often administered in rooms rented out at a university, hotel, or other building. This cost could be captured by the room rental cost. The Final RA takes a conservative approach, using the room rental cost to approximate the cost of delivering an exam over an additional day, as this is the larger of the two costs.

Based on the calculations provided in Sections 4.2.1 and 4.2.2 of the Final RA, the total additional costs of providing an extra testing day to eligible test takers will likely range between $2.7 and $4.8 million per year. Table 15 adds this into the total costs in the first year to approximate the range of total costs to society from implementing the ADA Amendments Act revisions. For further information on the methodology, data, and assumptions used to analyze these potential additional costs for national testing entities, please refer to Section 4.2 of the Final RA.

TABLE 15—TOTAL COSTS FIRST YEAR, PLUS POTENTIAL ADDITIONAL COSTS FOR ADDITIONAL DAY OF TESTING, NON-DISCOUNTED

[$ millions]

Cost category	Low value	Med value	High value
Postsecondary Institutions: ANNUAL Total Costs of Processing Additional Requests and Proctoring Extra Exam Time	$12.8	$18.0	$23.1
Postsecondary Institution: ONE–TIME Cost for Additional Training at Institutions	9.9	9.9	9.9
National Exams: ANNUAL Total Costs of Processing Additional Requests and Proctoring Extra Exam Time	6.8	9.5	12.2
National Exams: ONE–TIME Cost for Additional Training at Institutions	1.9	1.9	1.9
National Exams: ANNUAL Potential Additional Costs for Exams that Run over onto an Additional Day	2.7	3.8	4.8
Total	34.1	43.1	52.0

Note: Due to rounding, totals may not equate exactly to the sum of the inputs provided in the table.

Benefits Discussion

The Department believes that the enactment of the ADA Amendments Act benefits millions of Americans, and the benefits to those individuals are non-quantifiable but nonetheless significant. The Department determined, however, that there was a group of individuals with disabilities who would be able to receive benefits in the form of increased access to accommodations in testing from postsecondary institutions and national testing entities, and that these benefits would be associated with specific costs to those institutions and entities, which are analyzed above.

With respect to specific benefits, in the first year, our analysis estimates that approximately 148,261 to 266,870 postsecondary students will take advantage of accommodations for extra exam time that they otherwise would not have received but for this rule. Over 10 years, approximately 1.6 million to 2.8 million students will benefit. An additional 802,196 to 1.4 million national exam test takers would benefit over that same 10 years (assuming that people take an exam one time only).

Some number of these individuals could be expected to earn a degree or license that they otherwise would not have as a result of the testing accommodations they are now eligible to receive as a direct result of the ADA Amendments Act. The Department was unable to find robust data to estimate the number of students who would receive a bachelor's degree or licenses after this rule goes into effect that would not otherwise have received one. However, extensive research has shown notably higher earnings for those with college degrees over those who do not have degrees. Estimates of this lifetime earnings vary, with some studies estimating an earning differential ranging from approximately $300,000 to $1 million.[14] In addition, some number of students may be able to earn a degree in a higher-paying field than they otherwise could, and yet other students would get the same degree, but perhaps finish their studies faster or more successfully (*i.e.,* higher grades) than otherwise would be the case. All of these outcomes would be expected to lead to greater lifetime productivity and earnings.

In addition to these quantitative benefits, this rule will have significant non-quantifiable benefits to individuals with disabilities who, prior to the passage of the ADA Amendments Act and this rule, were denied the opportunity for equal access to an education or to become licensed in their chosen professions because of their inability to receive needed testing accommodations. As with all other improvements in access for individuals with disabilities, the ADA Amendments Act is expected to generate psychological benefits for covered individuals, including reduced stress and an increased sense of personal dignity and self-worth, as more individuals with disabilities are able to successfully complete tests and exams and more accurately demonstrate their academic skills and abilities. Some individuals will now be more likely to pursue a favored career path or educational pursuit, which will in turn lead to greater personal satisfaction.

Additional benefits to society arise from improved testing accessibility. For instance, if some persons with disabilities are able to increase their earnings, they may need less public support—either direct financial support or support from other programs or services. This, in turn, would lead to cross-sector benefits from resource savings arising from reduced social service agency outlays. Others, such as family members of individuals with disabilities, may also benefit from reduced financial and psychological pressure due to the greater independence and earnings of the family member whose disability is now covered by the ADA under the revised definition of "disability."

In addition to the discrete group of individuals with learning disabilities and ADHD who will benefit from the changes made to the definition of "disability," there is a class of individuals who will now fall within the nondiscrimination protections of the ADA if they are refused access to or participation in the facilities, programs, services, or activities of covered entities. The benefits to these individuals are significant, but unquantifiable. The Department believes (as did Congress when it enacted the ADA) that there is inherent value that results from greater accessibility for all Americans. Economists use the term ''existence value'' to refer to the benefit that individuals derive from the plain existence of a good, service, or resource—in this case, the increased accessibility to postsecondary degrees and specialized licenses that would arise from greater access to testing accommodations or the increased accessibility to covered entities' facilities, programs, services, or activities as a result of the ADA Amendments Act. This value can also be described as the value that people both with and without disabilities derive from the guarantees of equal protection and nondiscrimination. In other words, people value living in a country that guarantees the rights of persons with disabilities, whether or not they themselves are directly or indirectly affected by disabilities. There can be a number of reasons why individuals might value accessibility even if they do not require it now and do not ever anticipate needing it in the future. These reasons include bequest motives and concern for relatives or friends who require accessibility. People in society value equity, fairness, and human dignity, even if they cannot express these values in terms of money. These are the exact values that agencies are directed to consider in Executive Order 13563.

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[14] *See* Mark Schneider, *How Much Is That Bachelor's Degree Really Worth?: The Million Dollar Misunderstanding,* American Enterprise Institute, AEI Online (May 2009), available at *http://www.aei.org/article/education/higher-education/how-much-is-that-bachelors-degree-really-worth/* (last visited Feb. 3, 2016); U.S. Census Bureau, *Work-Life earnings by Field of Degree and Occupation for People with a Bachelor's Degree: 2011,* American Community Survey Briefs (Oct. 2012), *available at http://www.census.gov/prod/2012pubs/acsbr11-04.pdf* (last visited Feb. 3, 2016); Anthony P. Carnevale *et al., The College Payoff–Education, Occupations, Lifetime Earnings,* Georgetown University Center on Education and the Workforce (2011), *available at https://cew.georgetown.edu/wp-content/uploads/2014/11/collegepayoff-complete.pdf* (last visited April 22, 2016).

B. Regulatory Flexibility Act

In the NPRM, the Department stated that, based on its analysis, it ''can certify that the rule will not have a significant economic impact on a substantial number of small entities.'' The Department sought public comment on this proposed certification and its underlying analysis, including the costs to small entities, but received no public comments on these issues. The Attorney General has again reviewed this regulation in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), and by approving it hereby certifies that it will not have a significant economic impact on a substantial number of small entities for the reasons discussed more fully below.

First, the ADA Amendments Act took effect on January 1, 2009; all covered entities have been required to comply with the Act since that date and thus should be familiar with the requirements of the law. Second, the rule does not include reporting requirements and imposes no new recordkeeping requirements. Third, as shown above, the only title II and title III entities that would be significantly affected by the proposed changes to the ADA regulations are national testing entities and postsecondary institutions. The type of accommodations that most likely will be requested and required by those whose coverage has been clarified under titles II and III of ADA Amendments Act will be additional time in testing situations. While many of these national testing or postsecondary institutions are small businesses or small governmental entities, the costs associated with additional testing time are minimal; therefore, the Department believes the economic impact of this rule will be neither significant for these small entities nor disproportionate relative to the costs for larger entities.

The Department estimates that approximately 7,234 postsecondary institutions could be impacted based on data from the U.S. Department of Education National Center for Education Statistics.[15] The Department used data from the U.S. Census Bureau [16] from 2012 for Junior Colleges (NAICS [17] 6112) and Colleges, Universities, and Professional Schools (NAICS 6113) to estimate the proportion of those entities that would meet the Small Business Administration's criteria for small business or small governmental entity.[18] As shown in Table 18 and Table 19 below, small postsecondary institutions are estimated to account for approximately 35.3 percent of all postsecondary institutions. Therefore, the Department estimates that 2,556 small postsecondary institutions would be impacted by this rule.

The overall costs of this rule for postsecondary institutions were calculated based on the number of entities and number of postsecondary students affected. The cost of processing additional accommodation requests for extra exam time and the cost of additional time spent proctoring exams depend on the number of students. This methodology assumes that per-student costs are roughly the same for institutions of differing sizes. Because larger entities have more students on average than smaller ones, the Department used the proportion of the industry sub-group's revenues for small and large entities as a proxy for the number of students. Thus, using receipts for Junior Colleges (NAICS 6112) and Colleges, Universities, and Professional Schools (NAICS 6113) as a proxy for number of students, small postsecondary institutions are estimated to bear 4 percent of the processing and proctoring costs for providing additional exam time for that industry sub-group—or approximately $726,534 of the $17.95 million first-year costs. Additionally, postsecondary institutions are expected to incur one-time costs for additional training of $1,371 per entity (*see* Tables 6–8 in the Final RA). In total, small postsecondary institutions would incur $4.2 million in costs in the first year, which would average approximately $1,655 for each of the 2,556 small postsecondary institutions. The average annual revenue for each these small postsecondary institutions is $501,600. The cost is 0.33 percent of their revenue. Therefore, the costs will not be substantial for these small entities.

In comparison to the number of small postsecondary entities, there are approximately 4,678 postsecondary institutions (64.7 percent of the 7,234) that would be considered larger entities, and these larger entities would incur $23.6 million in costs during the first year, which would average out to approximately $5,053 per large postsecondary institution during the first year. This $5,053 per large postsecondary institution during the first year is approximately 3.1 times higher than the cost that would be incurred by small postsecondary institutions during that same time.

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[15] U.S. Department of Education, National Center for Education Statistics (2015). *Digest of Education Statistics,* 2013 (NCES 2015–011), Chapter 2. 2011–2012 academic year—Number of Title IV institutions, by level and control of institution and state or other jurisdiction, *available at https://nces.ed.gov/fastfacts/display.asp?id=84* (last visited Feb.3, 2016).

[16] U.S. Census Bureau, Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Receipt Sizes for the United States, NAICS Sectors: 2012, *available at http://www.census.gov/econ/susb/* (last visited Feb. 3, 2016).

[17] North American Industry Classification System.

[18] U.S. Small Business Administration, *Table of Small Business Size Standards, available at https://www.sba.gov/content/small-business-size-standards* (last visited April 22, 2016).

TABLE 16—FIRM, ESTABLISHMENT, AND RECEIPTS DATA FOR JUNIOR COLLEGES (NAICS 6112) IN 2012

	Firms	Establishments	Est. receipts ($000,000)
All Junior Colleges	464	953	8,449
Small Junior Colleges (estimated)*	378	427	1,723
Small Junior Colleges as a Percentage of All Junior Colleges	81.5%	44.8%	20.4%

* SBA small business standard is $20.5 million; small business totals here include those with receipts under $25 million. This is due to data being reported in size categories that do not exactly match industry small business classifications: *i.e.* from $10 million to $14.99 million, and from $15 million to $19.99 million; and from $20 million to $24.99 million, and from $25 million to $29.99 million.

Source: Calculated from data provided by the U.S. Census Bureau, Statistics of U.S. Businesses. *See* SBA Office of Advocacy and U.S. Census Bureau, *Statistics of U.S. Businesses, Table 2—Number of firms, establishment, receipts, employment, and payroll by firm size (in receipts) and industry, 2012, available at https://www.sba.gov/advocacy/firm-size-data* (last visited April 22, 2016).

TABLE 17—FIRM, ESTABLISHMENT, AND RECEIPTS DATA FOR COLLEGES, UNIVERSITIES, AND PROFESSIONAL SCHOOLS (NAICS 6113) IN 2012

	Firms	Establishments	Est. receipts ($000,000)
All Colleges, Universities, and Professional Schools	2,282	4,329	222,854
Small Colleges, Universities, and Professional Schools (estimated)*	1,369	1,439	7,637
Small Colleges, Universities, and Professional Schools as a Percentage of All Colleges, Universities, and Professional Schools	60.0%	33.2%	3.4%

* SBA small business standard is $27.5 million; small business totals here include those with receipts under $30 million. This is due to data being reported in size categories that do not exactly match industry small business classifications: *i.e.* from $10 million to $14.99 million, and from $15 million to $19.99 million; and from $20 million to $24.99 million, and from $25 million to $29.99 million.

Source: Calculated from data provided by the U.S. Census Bureau, Statistics of U.S. Businesses. *See* SBA Office of Advocacy and U.S. Census Bureau, *Statistics of U.S. Businesses, Table 2—Number of firms, establishment, receipts, employment, and payroll by firm size (in receipts) and industry, 2012, available at https://www.sba.gov/advocacy/firm-size-data* (last visited April 22, 2016).

TABLE 18—FIRM, ESTABLISHMENT, AND RECEIPTS DATA FOR BOTH JUNIOR COLLEGES (NAICS 6112) AND SMALL COLLEGES, UNIVERSITIES, AND PROFESSIONAL SCHOOLS (NAICS 6113), COMBINED, IN 2012

	Firms	Establishments	Est. receipts ($000,000)
All Junior Colleges, and Colleges, Universities, and Professional Schools	2,746	5,282	231,303
Small Junior Colleges, and Colleges, Universities, and Professional Schools (estimated)*	1,747	1,866	9,360
Small Junior Colleges, and Colleges, Universities, and Professional Schools as a Percentage of All Junior Colleges, and Colleges, Universities, and Professional Schools	63.6%	35.3%	4.0%

* SBA small business standard for Junior Colleges is $20.5 million; small business totals here include Junior Colleges with receipts under $25 million. This is due to data being reported in size categories that do not exactly match industry small business classifications: *i.e.* from $10 million to $14.99 million, and from $15 million to $19.99 million; and from $20 million to $24.99 million, and from $25 million to $29.99 million. The SBA small business standard for Colleges, Universities, and Professional Schools is $27.5 million; small business totals here include Colleges, Universities, and Professional Schools with receipts under $30 million. This is due to data being reported in size categories that do not exactly match industry small business classifications: *i.e.* from $10 million to $14.99 million, and from $15 million to $19.99 million; and from $20 million to $24.99 million, and from $25 million to $29.99 million.

Source: Calculated from data provided by the U.S. Census Bureau, Statistics of U.S. Businesses. *See* SBA Office of Advocacy and U.S. Census Bureau, *Statistics of U.S. Businesses, Table 2—Number of firms, establishment, receipts, employment, and payroll by firm size (in receipts) and industry, 2012, available at https://www.sba.gov/advocacy/firm-size-data* (last visited April 22, 2016).

TABLE 19—ESTIMATED SMALL ENTITY ESTABLISHMENTS FOR POSTSECONDARY INSTITUTIONS IN 2011–12

Total Postsecondary Establishments (All Firms/Entities); Academic year 2010–2011*	7,234
Percent Small Entities (2012)**	35.3%
Total Impacted Small Entity Establishments***	2,556

* U.S. Department of Education, National Center for Education Statistics, (2015), *Digest of Education Statistics,* 2013 (NCES 2015–011), available at *https://nces.ed.gov/fastfacts/display.asp?id=84* (last visited Feb. 3, 2016).

** Derived from Tables 16–18 above.

*** Estimated using percentage of small establishments for NAICS sectors 6112 and 6113.

In addition to postsecondary institutions, some national testing entities would also be impacted. The Department used data on Educational Test Development and Evaluation Services (NAICS 6117102)[19] to estimate the number of affected entities. Approximately 1,397 national testing entities would be impacted by this rule, irrespective of size. Small entity establishments are estimated to account for 923 (66.1 percent) of these.

TABLE 20—FIRM AND RECEIPTS DATA FOR NATIONAL TESTING ENTITIES IN 2007: EDUCATIONAL TEST DEVELOPMENT AND EVALUATION SERVICES (NAICS 6117102)

	Firms	Establishments	Est. receipts ($000,000)
Small, Medium, and Large Entities *	748	1,144	2,843
Small Entities **	734	756	704
Percentage Small Entities	98.1%	66.1%	24.8%
Total Entities	1,000	1,397	2,907
Estimated Total Small Entities ***	981	923	720

* Includes only those entities which were categorized by annual revenue in the available data.

** Data is reported in size categories that do not exactly match industry small business classifications: *i.e.* from $5 million to $9.99 million, and from $10 million to $24.99 million. *SBA small business standard is $15.0 million for all Educational Support Services; small business totals here include those with receipts under $25 million.*

*** Applying the estimated percentage of small entities to the total number of entities.

Source: Calculated from data provided by the U.S. Census Bureau. *See* U.S. Census Bureau, *2007 Economic Census, Educational Services: Subject Series—Estab and Firm Size: Receipts/Revenue Size of Establishments for the United States: 2007* (EC0761SSSZ4)*, available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_61SSSZ1&prodType=tableE:* (last visited Feb. 3, 2016).

Small entity establishments in the Educational Test Development and Evaluation Services industry group account for 24.8 percent of that industry's receipts. If receipts are used as a proxy for number of test takers in a manner similar to that described above for postsecondary institutions, then small national testing entities can be expected to bear 24.8 percent of the industry's $9.49 million first-year costs of processing additional accommodation requests for extra exam time and additional time spent proctoring exams—or approximately $2.35 million. Additionally, national testing entities are expected to incur a fixed cost for additional training of $1,371 per entity. Thus, for the approximately 923 small national testing entities, total costs in the first year are estimated to average $3,918 each. Average revenue for these entities is $780,264. The cost is 0.50 percent of their revenue. Therefore, the costs will not be substantial for these small entities.

In comparison to the number of small testing entities, approximately 474 national testing center establishments (33.9 percent of the 1,397) would be considered larger entities, and they would incur $7.79 million in costs during the first year, which would average out to approximately $16,440 per large national testing center establishment during the first year. This $16,440 per large national testing center establishment is approximately 4.2 times as high as the cost that would be incurred by small national testing center establishments during that same time.

As explained above, the Department estimates that approximately 2,556 small postsecondary establishments and 923 small national testing establishments would be impacted by this rule, for a total of approximately 3,479 small business establishments. The estimates were based on average estimates for all entities, irrespective of size. The Department notes that the average first-year cost estimates presented above for small entities are higher than the first-year cost estimates presented in the NPRM because the Department's estimates for the initial training costs (which will be incurred during the first year) are now higher based on public comment and further research and analysis conducted by the Department. However, the overall costs of this rule for small entities over the 10-year period are lower because the Department's final overall cost estimates in the Final RA are lower as a result of refinements made to the analysis in response to public comment and based on further research conducted by the Department.

Based on the above analysis, the Attorney General can certify that the rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132: Federalism

Executive Order 13132 of August 4, 1999, Federalism, directs that, to the extent practicable and permitted by law, an agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, that is not required by statute, or that preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Because this rule does not have federalism implications as defined in the Executive Order, does not impose direct compliance costs on State and local governments, is required by statute, and does not preempt State law within the meaning of the Executive Order, the Department has concluded that compliance with the requirements of section 6 is not necessary.

D. Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department operates a toll-free ADA Information Line (800) 514–0301 (voice); (800) 514–0383 (TTY) that the public is welcome to call to obtain assistance in understanding anything in this final rule.

E. Paperwork Reduction Act

This final rule does not contain any new or revised "collection[s] of information" as defined by the

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[19] Using data reported by the Census Bureau for 2007, the most recent year for which information on NAICS 6117102 was available.

Paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq.*

F. Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that "establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability." Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects for 28 CFR Parts 35 and 36

Administrative practice and procedure, Buildings and facilities, Business and industry, Civil rights, Communications equipment, Individuals with disabilities, Reporting and recordkeeping requirements, State and local governments.

By the authority vested in me as Attorney General by law, including 28 U.S.C. 509 and 510, 42 U.S.C. 12134, 12186, and 12205a, and Public Law 110–325, 122 Stat. 3553 (2008), parts 35 and 36 of title 28 of the Code of Federal Regulations are amended as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

■ 1. Revise the authority citation for part 35 to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

■ 2. Revise § 35.101 to read as follows:

§ 35.101 Purpose and broad coverage.

(a) *Purpose.* The purpose of this part is to implement subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131–12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub. L. 110–325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by public entities.

(b) *Broad coverage.* The primary purpose of the ADA Amendments Act is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the ADA Amendments Act's purpose of reinstating a broad scope of protection under the ADA, the definition of "disability" in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of "disability." The question of whether an individual meets the definition of "disability" under this part should not demand extensive analysis.

■ 3. Amend § 35.104 by revising the definition of "Disability" to read as follows:

§ 35.104 Definitions.

* * * * *

Disability. The definition of *disability* can be found at § 35.108.

* * * * *

■ 4. Add § 35.108 to subpart A to read as follows:

§ 35.108 Definition of "disability."

(a)(1) *Disability* means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment as described in paragraph (f) of this section.

(2) *Rules of construction.* (i) The definition of "disability" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.

(ii) An individual may establish coverage under any one or more of the three prongs of the definition of "disability" in paragraph (a)(1) of this section, the "actual disability" prong in paragraph (a)(1)(i) of this section, the "record of" prong in paragraph (a)(1)(ii) of this section, or the "regarded as" prong in paragraph (a)(1)(iii) of this section.

(iii) Where an individual is not challenging a public entity's failure to provide reasonable modifications under § 35.130(b)(7), it is generally unnecessary to proceed under the "actual disability" or "record of" prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the "regarded as" prong of the definition of "disability," which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. An individual may choose, however, to proceed under the "actual disability" or "record of" prong regardless of whether the individual is challenging a public entity's failure to provide reasonable modifications.

(b)(1) *Physical or mental impairment* means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

(2) *Physical or mental impairment* includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(3) *Physical or mental impairment* does not include homosexuality or bisexuality.

(c)(1) *Major life activities* include, but are not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(ii) The operation of a *major bodily function,* such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

(2) *Rules of construction.* (i) In determining whether an impairment substantially limits a major life activity, the term *major* shall not be interpreted strictly to create a demanding standard.

(ii) Whether an activity is a *major life activity* is not determined by reference to whether it is of *central* importance to daily life.

(d) *Substantially limits*—(1) *Rules of construction.* The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity.

(i) The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. "Substantially limits" is not meant to be a demanding standard.

(ii) The primary object of attention in cases brought under title II of the ADA should be whether public entities have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.

(iii) An impairment that substantially limits one major life activity does not need to limit other major life activities in order to be considered a substantially limiting impairment.

(iv) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(v) An impairment is a disability within the meaning of this part if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(vi) The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for substantially limits applied prior to the ADA Amendments Act.

(vii) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence. Nothing in this paragraph (d)(1) is intended, however, to prohibit or limit the presentation of scientific, medical, or statistical evidence in making such a comparison where appropriate.

(viii) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(ix) The six-month "transitory" part of the "transitory and minor" exception in paragraph (f)(2) of this section does not apply to the "actual disability" or "record of" prongs of the definition of "disability." The effects of an impairment lasting or expected to last less than six months can be substantially limiting within the meaning of this section for establishing an actual disability or a record of a disability.

(2) *Predictable assessments.* (i) The principles set forth in the rules of construction in this section are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities under the ADA.

(ii) Applying these principles, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraph (a)(1)(i) of this section (the "actual disability" prong) or paragraph (a)(1)(ii) of this section (the "record of" prong). Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(iii) For example, applying these principles it should easily be concluded that the types of impairments set forth in paragraphs (d)(2)(iii)(A) through (K) of this section will, at a minimum, substantially limit the major life activities indicated. The types of impairments described in this paragraph may substantially limit additional major life activities (including major bodily functions) not explicitly listed in paragraphs (d)(2)(iii)(A) through (K).

(A) Deafness substantially limits hearing;

(B) Blindness substantially limits seeing;

(C) Intellectual disability substantially limits brain function;

(D) Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function;

(E) Autism substantially limits brain function;

(F) Cancer substantially limits normal cell growth;

(G) Cerebral palsy substantially limits brain function;

(H) Diabetes substantially limits endocrine function;

(I) Epilepsy, muscular dystrophy, and multiple sclerosis each substantially limits neurological function;

(J) Human Immunodeficiency Virus (HIV) infection substantially limits immune function; and

(K) Major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each substantially limits brain function.

(3) *Condition, manner, or duration.* (i) At all times taking into account the principles set forth in the rules of construction, in determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the conditions under which the individual performs the major life activity; the manner in which the individual performs the major life activity; or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

(ii) Consideration of facts such as condition, manner, or duration may include, among other things, consideration of the difficulty, effort or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; or the way an impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(iii) In determining whether an individual has a disability under the "actual disability" or "record of" prongs of the definition of "disability," the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population.

(iv) Given the rules of construction set forth in this section, it may often be unnecessary to conduct an analysis involving most or all of the facts related to condition, manner, or duration. This is particularly true with respect to impairments such as those described in paragraph (d)(2)(iii) of this section, which by their inherent nature should be easily found to impose a substantial limitation on a major life activity, and for which the individualized assessment should be particularly simple and straightforward.

(4) *Mitigating measures* include, but are not limited to:

(i) Medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) Reasonable modifications or auxiliary aids or services as defined in this regulation;

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(e) *Has a record of such an impairment.* (1) An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(2) *Broad construction.* Whether an individual has a record of an impairment that substantially limited a major life activity shall be construed broadly to the maximum extent permitted by the ADA and should not demand extensive analysis. An individual will be considered to fall within this prong of the definition of "disability" if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a major life activity, the principles articulated in paragraph (d)(1) of this section apply.

(3) *Reasonable modification.* An individual with a record of a substantially limiting impairment may be entitled to a reasonable modification if needed and related to the past disability.

(f) *Is regarded as having such an impairment.* The following principles apply under the "regarded" as prong of the definition of "disability" (paragraph (a)(1)(iii) of this section):

(1) Except as set forth in paragraph (f)(2) of this section, an individual is "regarded as having such an impairment" if the individual is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity, even if the public entity asserts, or may or does ultimately establish, a defense to the action prohibited by the ADA.

(2) An individual is not "regarded as having such an impairment" if the public entity demonstrates that the impairment is, objectively, both "transitory" and "minor." A public entity may not defeat "regarded as" coverage of an individual simply by demonstrating that it subjectively believed the impairment was transitory and minor; rather, the public entity must demonstrate that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment), objectively, both "transitory" and "minor." For purposes of this section, "transitory" is defined as lasting or expected to last six months or less.

(3) Establishing that an individual is "regarded as having such an impairment" does not, by itself, establish liability. Liability is established under title II of the ADA only when an individual proves that a public entity discriminated on the basis of disability within the meaning of title II of the ADA, 42 U.S.C. 12131–12134.

(g) *Exclusions.* The term "disability" does not include—

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

Subpart B—General Requirements

■ 5. Amend § 35.130 by revising paragraph (b)(7) and adding paragraph (i) to read as follows:

§ 35.130 General prohibitions against discrimination.

* * * * *

(b) * * *

(7)(i) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(ii) A public entity is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of "disability" at § 35.108(a)(1)(iii).

* * * * *

(i) Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability.

* * * * *

■ 6. Add Appendix C to part 35 to read as follows:

Appendix C to Part 35—Guidance to Revisions to ADA Title II and Title III Regulations Revising the Meaning and Interpretation of the Definition of "Disability" and Other Provisions in Order To Incorporate the Requirements of the ADA Amendments Act

Note: This appendix contains guidance providing a section-by-section analysis of the revisions to 28 CFR parts 35 and 36 published on August 11, 2016.

Guidance and Section-by-Section Analysis

This section provides a detailed description of the Department's changes to the meaning and interpretation of the definition of "disability" in the title II and title III regulations, the reasoning behind those changes, and responses to public comments received on these topics. *See* Office of the Attorney General; Amendment of Americans with Disabilities Act Title II and Title III Regulations to Implement ADA Amendments Act of 2008, 79 FR 4839 (Jan. 30, 2014) (NPRM).

Sections 35.101 and 36.101—Purpose and Broad Coverage

Sections 35.101 and 36.101 set forth the purpose of the ADA title II and title III regulations. In the NPRM, the Department proposed revising these sections by adding references to the ADA Amendments Act in renumbered §§ 35.101(a) and 36.101(a) and by adding new §§ 35.101(b) and 36.101(b), which explain that the ADA is intended to have broad coverage and that the definition of "disability" shall be construed broadly. The proposed language in paragraph (b) stated that the primary purpose of the ADA Amendments Act is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the ADA Amendments Act's purpose of reinstating a broad scope of protection under the ADA, the definition of "disability" in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in ADA cases should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. The question of whether an individual meets the definition of disability should not demand extensive analysis.

Many commenters supported inclusion of this information as reiterating the statutory language evincing Congress' intention "to restore a broad definition of 'disability' under the ADA. . . ." Several commenters asked the Department to delete the last sentence in §§ 35.101(b) and 36.101(b), arguing that inclusion of this language is inconsistent with the individualized assessment required under the ADA. Some of these commenters acknowledged, however, that this language is drawn directly from the "Purposes" of the ADA Amendments Act. *See* Public Law 110–325, sec. 2(b)(5). The Department declines to remove this sentence from the final rule. In addition to directly quoting the statute, the Department believes that this language neither precludes nor is inconsistent with conducting an individualized assessment of whether an individual is covered by the ADA.

Some commenters recommended that the Department add a third paragraph to these sections expressly stating that "not all impairments are covered disabilities." These commenters contended that "[t]here is a common misperception that having a diagnosed impairment automatically triggers coverage under the ADA." While the Department does not agree that such a misperception is common, it agrees that it would be appropriate to include such a statement in the final rule, and has added it to the rules of construction explaining the phrase "substantially limits" at §§ 35.108(d)(1)(v) and 36.105(d)(1)(v).

Sections 35.104 and 36.104—Definitions

The current title II and title III regulations include the definition of "disability" in regulatory sections that contain all enumerated definitions in alphabetical order. Given the expanded length of the definition of "disability" and the number of additional subsections required in order to give effect to the requirements of the ADA Amendments Act, the Department, in the NPRM, proposed moving the definition of "disability" from the general definitional sections at §§ 35.104 and 36.104 to a new section in each regulation, §§ 35.108 and 36.105, respectively.

The Department received no public comments in response to this proposal and the definition of "disability" remains in its own sections in the final rule.

Sections 35.108(a)(1) and 36.105(a)(1) Definition of "disability"—General

In the ADA, Congress originally defined "disability" as "(A) a physical or mental impairment that substantially limits one or more major life activities of an individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." Public Law 101–336, sec. 3 (1990). This three-part definition—the "actual," "record of," and "regarded as" prongs—was modeled after the definition of "handicap" found in the Rehabilitation Act of 1973. H.R. Rep. No. 110–730, pt. 2, at 6 (2008). The Department's 1991 title II and title III ADA regulations reiterate this three-part basic definition as follows:

> Disability means, with respect to an individual,
>
> - a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
> - a record of such an impairment; or
> - being regarded as having such an impairment.

56 FR 35694, 35717 (July 26, 1991); 56 FR 35544, 35548 (July 26, 1991).

While the ADA Amendments Act did not amend the basic structure or terminology of the original statutory definition of "disability," the Act revised the third prong to incorporate by reference two specific provisions construing this prong. 42 U.S.C. 12102(3)(A)–(B). The first statutory provision clarified the scope of the "regarded as" prong by explaining that "[a]n individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity." 42 U.S.C. 12102(3)(A). The second statutory provision provides an exception to the "regarded as" prong for impairments that are both transitory and minor. A transitory impairment is defined as "an impairment with an actual or expected duration of 6 months or less." 42 U.S.C. 12102(3)(B). In the NPRM, the Department proposed revising the "regarded as" prong in §§ 35.108(a)(1)(iii) and 36.105(a)(1)(iii) to reference the regulatory provisions that implement 42 U.S.C. 12102(3). The NPRM proposed, at §§ 35.108(f) and 36.105(f), that "regarded as" having an impairment would mean that the individual has been subjected to an action prohibited by the ADA because of an actual or perceived impairment that is not both "transitory and minor."

The first proposed sentence directed that the meaning of the "regarded as prong" shall be understood in light of the requirements in §§ 35.108(f) and 36.105(f). The second proposed sentence merely provided a summary restatement of the requirements of §§ 35.108(f) and 36.105(f). The Department received no comments in response to this proposed language. Upon consideration, however, the Department decided to retain the first proposed sentence but omit the second as superfluous. Because the first sentence explicitly incorporates and directs the public to the requirements set out in §§ 35.108(f) and 36.105(f), the Department believes that summarizing those requirements here is unnecessary. Accordingly, in the final rule, §§ 35.108(a)(1)(iii) and 36.105(a)(1)(iii) simply reference paragraph (f) of the respective section. *See also*, discussion in the Guidance and Section-by-Section analysis of §§ 35.108(f) and 36.105(f), below.

Sections 35.108(a)(2) and 36.105(a)(2) Definition of "disability"—Rules of Construction

In the NPRM, the Department proposed §§ 35.108(a)(2) and 36.105(a)(2), which set forth rules of construction on how to apply the definition of "disability." Proposed §§ 35.108(a)(2)(i) and 36.105(a)(2)(i) state that an individual may establish coverage under any one or more of the prongs in the definition of "disability"—the "actual disability" prong in paragraph (a)(1)(i), the "record of" prong in paragraph (a)(1)(ii) or the "regarded as" prong in paragraph (a)(1)(iii). *See* §§ 35.108(a)(1)(i) through (iii); 36.105(a)(1)(i) through (iii). The NPRM's inclusion of rules of construction stemmed directly from the ADA Amendments Act, which amended the ADA to require that the definition of "disability" be interpreted in conformance with several specific directives and an overarching mandate to ensure "broad coverage . . . to the maximum extent permitted by the terms of [the ADA]." 42 U.S.C. 12102(4)(A).

To be covered under the ADA, an individual must satisfy only one prong. The term "actual disability" is used in these rules of construction as shorthand terminology to refer to an impairment that substantially limits a major life activity within the meaning of the first prong of the definition of "disability." *See* §§ 35.108(a)(1)(i); 36.105(a)(1)(i). The terminology selected is for ease of reference. It is not intended to suggest that an individual with a disability who is covered under the first prong has any greater rights under the ADA than an individual who is covered under the "record of" or "regarded as" prongs, with the exception that the ADA Amendments Act revised the ADA to expressly state that an individual who meets the definition of "disability" solely under the "regarded as" prong is not entitled to reasonable modifications of policies, practices, or procedures. *See* 42 U.S.C. 12201(h).

Proposed §§ 35.108(a)(2)(ii) and 36.105(a)(2)(ii) were intended to incorporate Congress's expectation that consideration of coverage under the "actual disability" and "record of disability" prongs of the definition of "disability" will generally be unnecessary except in cases involving requests for reasonable modifications. *See* 154 Cong. Rec. H6068 (daily ed. June 25, 2008) (joint statement of Reps. Steny Hoyer and Jim Sensenbrenner). Accordingly, these provisions state that, absent a claim that a covered entity has failed to provide reasonable modifications, typically it is not necessary to rely on the "actual disability" or "record of" disability prongs. Instead, in such cases, the coverage can be evaluated exclusively under the "regarded as" prong," which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. Whether or not an individual is challenging a covered entity's failure to provide reasonable modifications, the individual may nevertheless proceed under the "actual disability" or "record of" prong. The Department notes, however, that where an individual is challenging a covered entity's failure to provide effective communication, that individual cannot rely solely on the "regarded as prong" because the entitlement to an auxiliary aid or service is contingent on a disability-based need for the requested auxiliary aid or service. *See* 28 CFR 35.160(b), 28 CFR 36.303(c).

The Department received no comments objecting to these proposed rules of construction. The final rule retains these provisions but renumbers them as paragraphs (ii) and (iii) of §§ 35.108(a)(2) and 36.105(a)(2) and replaces the reference to "covered entity" in the title III regulatory text with "public accommodation."

The Department has added a third rule of construction at the beginning of §§ 35.108(a)(2) and 36.105(a)(2), numbered §§ 35.108(a)(2)(i) and 36.105(a)(2)(i). Closely tracking the amended statutory language, these provisions state that "[t]he definition of disability shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA." *See* 42 U.S.C. 12102(4)(A). This principle is referenced in other portions of the final rule, but the Department believes it is important to include here underscore Congress's intent that it be applied throughout the determination of whether an individual falls within the ADA definition of "disability."

Sections 35.108(b) and 36.105(b)—Physical or Mental Impairment

The ADA Amendments Act did not change the meaning of the term "physical or mental impairment." Thus, in the NPRM, the Department proposed only minor modifications to the general regulatory definitions for this term at §§ 35.108(b)(1)(i) and 36.105(b)(1)(i) by adding examples of two additional body systems—the immune system and the circulatory system—that may be affected by a physical impairment.

In addition, the Department proposed adding "dyslexia" to §§ 35.108(b)(2) and 36.105(b)(2) as an example of a specific learning disability that falls within the meaning of the phrase "physical or mental impairment." Although dyslexia is a specific diagnosable learning disability that causes difficulties in reading, unrelated to intelligence and education, the Department became aware that some covered entities mistakenly believe that dyslexia is not a clinically diagnosable impairment. Therefore, the Department sought public comment regarding its proposed inclusion of a reference to dyslexia in these sections.

The Department received a significant number of comments in response to this proposal. Many commenters supported inclusion of the reference to dyslexia. Some of these commenters also asked the Department to include other examples of specific learning disabilities such as dysgraphia [1] and dyscalculia.[2] Several commenters remarked that as "research and practice bear out, dyslexia is just one of the specific learning disabilities that arise from 'neurological differences in brain structure and function and affect a person's ability to receive, store, process, retrieve or communicate information.'" These commenters identified the most common specific learning disabilities as: "Dyslexia, dysgraphia, dyscalculia, auditory processing disorder, visual processing disorder and non-verbal learning disabilities," and recommended that the Department rephrase its reference to specific learning disabilities to make clear that there are many other specific learning disabilities besides dyslexia. The Department has considered all of these comments and has decided to use the phrase "dyslexia and other specific learning disabilities" in the final rule.

Another commenter asked the Department to add a specific definition of dyslexia to the regulatory text itself. The Department declines to do so as it does not give definitions for any other physical or mental impairment in the regulations.

Other commenters recommended that the Department add ADHD to the list of examples of "physical or mental impairments" in §§ 35.108(b)(2) and 36.105(b)(2).[3] Some commenters stated that ADHD, which is not a specific learning disability, is a very commonly diagnosed impairment that is not always well understood. These commenters expressed concern that excluding ADHD from the list of physical and mental impairments could be construed to mean that ADHD is less likely to support an assertion of disability as compared to other impairments. On consideration, the Department agrees that, due to the prevalence of ADHD but lack of public understanding of the condition, inclusion of ADHD among the examples set forth in §§ 35.108(b)(2) and 36.105(b)(2) will provide appropriate and helpful guidance to the public.

Other commenters asked the Department to include arthritis, neuropathy, and other examples of physical or mental impairments that could substantially impair a major life activity. The Department declines to add any other examples because, while it notes the value in clarifying the existence of impairments such as ADHD, it also recognizes that the regulation need not elaborate an inclusive list of all impairments, particularly those that are very prevalent, such as arthritis, or those that may be symptomatic of other underlying impairments already referenced in the list, such as neuropathy, which may be caused by cancer or diabetes. The list is merely illustrative and not exhaustive. The regulations clearly state that the phrase "physical or mental impairment" includes, but is not limited to" the examples provided. No negative implications should be drawn from the omission of any specific impairment in §§ 35.108(b) and 36.105(b).

The Department notes that it is important to distinguish between conditions that are impairments and physical, environmental, cultural, or economic characteristics that are not impairments. The definition of the term "impairment" does not include physical characteristics such as eye color, hair color, or left-handedness, or height, weight, or muscle tone that are within "normal" range. Moreover, conditions that are not themselves physiological disorders, such as pregnancy, are not impairments. However, even if an underlying condition or characteristic is not itself a physical or mental impairment, it may give rise to a physical or mental impairment that substantially limits a major life activity. In such a case, an individual would be able to establish coverage under the ADA. For example, while pregnancy itself is not an impairment, a pregnancy-related impairment that substantially limits a major life activity will constitute a disability under the first prong of the definition.[4] Major life activities that might be substantially limited by pregnancy-related impairments could include walking, standing, and lifting, as well as major bodily functions such as the musculoskeletal, neurological, cardiovascular, circulatory, endocrine, and reproductive functions. Alternatively, a pregnancy-related impairment may constitute a "record of" a substantially limiting impairment, or may be covered under the "regarded as" prong if it is the basis for a prohibited action and is not both "transitory and minor."

Sections 35.108(c) and 36.105(c)—Major Life Activities

Prior to the passage of the ADA Amendments Act, the ADA did not define "major life activities," leaving delineation of illustrative examples to agency regulations. Paragraph 2 of the definition of "disability" in the Department's current title II and title III regulations at 28 CFR 35.104 and 36.104 states that "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The ADA Amendments Act significantly expanded the range of major life activities by directing that "major" be interpreted in a more expansive fashion, by adding a significant new category of major life activities, and by providing non-exhaustive lists of examples of major life activities. The amended statute's first list of major life activities includes, but is not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. 12102(2)(A). The ADA Amendments Act also broadened the definition of "major life activity" to include physical or mental impairments that substantially limit the operation of a "major bodily function," which include, but are not limited to, the "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." 42 U.S.C. 12102(2)(B). These expanded lists of examples of major life activities reflect Congress's directive to expand the meaning of the term "major" in response to court decisions that interpreted the term more narrowly than Congress intended. *See* Public Law 110–25, sec. 3 (b)(4).

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[1] Dysgraphia is a learning disability that negatively affects the ability to write.

[2] Dyscalculia is a learning disability that negatively affects the processing and learning of numerical information.

[3] The Department is using the term ADHD in the same manner as it is currently used in the Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM–5), to refer to three different presentations of symptoms: Predominantly inattentive (which was previously known as "attention deficit disorder); predominantly hyperactive or impulsive; or a combined presentation of inattention and hyperactivity-impulsivity. The DSM–5 is the most recent edition of a widely-used manual designed to assist clinicians and researchers in assessing mental disorders. *See Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition DSM–5,* American Psychiatric Association, at 59–66 (2013).

[4] Pregnancy-related impairments may include, but are not limited to: Disorders of the uterus and cervix, such as insufficient cervix or uterine fibroids; and pregnancy-related anemia, sciatica, carpal tunnel syndrome, gestational diabetes, nausea, abnormal heart rhythms, limited circulation, or depression. *See* EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues, EEOC Notice 915.003, June 25, 2015, *available at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm* (last visited Feb. 3, 2016).

Examples of Major Life Activities, Other Than the Operations of a Major Bodily Function

In the NPRM, at §§ 35.108(c) and 36.105(c), the Department proposed revisions of the title II and title III lists of examples of major life activities (other than the operations of a major bodily function) to incorporate all of the statutory examples, as well as to provide additional examples included in the EEOC title I final regulation—reaching, sitting, and interacting with others. *See* 29 CFR 1630.2(i)(1)(i).

A number of commenters representing persons with disabilities or the elderly recommended that the Department add a wide variety of other activities to this first list. Some commenters asked the Department to include references to test taking, writing, typing, keyboarding, or executive function.[5] Several commenters asked the Department to include other activities as well, such as the ability to engage in sexual activity, perform mathematical calculations, travel, or drive. One commenter asked the Department to recognize that, depending upon where people live, other life activities may fall within the category of major life activities. This commenter asserted, for example, that tending livestock or operating farm equipment can be a major life activity in a farming or ranching community, and that maintaining septic, well or water systems, or gardening, composting, or hunting may be a major life activity in a rural community.

On consideration of the legislative history and the relevant public comments, the Department decided to include "writing" as an additional example in its non-exhaustive list of examples of major life activities in the final rule. The Department notes Congress repeatedly stressed that writing is one of the major life activities that is often affected by a covered learning disability. *See, e.g.,* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers); H.R. Rep. No. 110–730 pt. 1, at 10–11 (2008).

Other than "writing," the Department declines to add additional examples of major life activities to these provisions in the final rule. This list is illustrative, and the Department believes that it is neither necessary nor possible to list every major life activity. Moreover, the Department notes that many of the commenters' suggested inclusions implicate life activities already included on the list. For example, although, as commenters pointed out, some courts have concluded that test taking is a major life activity,[6] the Department notes that one or more already-included major life activities—such as reading, writing, concentrating, or thinking, among others—will virtually always be implicated in test taking. Similarly, activities such as operating farm equipment, or maintaining a septic or well system, implicate already-listed major life activities such as reaching, lifting, bending, walking, standing, and performing manual tasks.

The commenters' suggested additions also implicate the operations of various bodily systems that may already be recognized as major life activities. *See* discussion of §§ 35.108(c)(1)(ii) and 36.105(c)(1)(ii), below. For example, it is the Department's view that individuals who have cognitive or other impairments that affect the range of abilities that are often described as part of "executive function" will likely be able to assert that they have impairments that substantially limit brain function, which is one of the major bodily functions listed among the examples of major life activities.

Examples of Major Life Activities—Operations of a Major Bodily Function

In the NPRM, the Department proposed revising the regulatory definitions of disability at §§ 35.108(c)(1)(ii) and 36.105(c)(1)(ii) to make clear that the operations of major bodily functions are major life activities, and to include a non-exhaustive list of examples of major bodily functions, consistent with the language of the ADA as amended. Because the statutory list is non-exhaustive, the Department also proposed further expanding the list to include the following examples of major bodily functions: The functions of the special sense organs and skin, genitourinary, cardiovascular, hemic, lymphatic, and musculoskeletal systems. These six major bodily functions also are specified in the EEOC title I final regulation. 29 CFR 1630.2(i)(1)(i).

One commenter objected to the Department's inclusion of additional examples of major life activities in both these lists, suggesting that the Department include only those activities and conditions specifically set forth in the ADA as amended. The Department believes that providing other examples of major life activities, including major bodily functions, is within the Attorney General's authority to both interpret titles II and III of the ADA and promulgate implementing regulations and that these examples provide helpful guidance to the public. Therefore, the Department declines to limit its lists of major life activities to those specified in the statute. Further, the Department notes that even the expanded lists of major life activities and major bodily functions are illustrative and non-exhaustive. The absence of a particular life activity or bodily function from the list should not create a negative implication as to whether such activity or function constitutes a major life activity under the statute or the implementing regulation.

Rules of Construction for Major Life Activities

In the NPRM, proposed §§ 35.108(c)(2) and 36.105(c)(2) set out two specific principles applicable to major life activities: "[i]n determining other examples of major life activities, the term 'major' shall not be interpreted strictly to create a demanding standard for disability," and "[w]hether an activity is a 'major life activity' is not determined by reference to whether it is of 'central importance to daily life.'" The proposed language furthered a main purpose of the ADA Amendments Act—to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc.* v. *Williams* that (1) strictly interpreted the terms "substantially" and "major" in the definition of "disability" to create a demanding standard for qualifying as disabled under the ADA, and that (2) required an individual to have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives to be considered as "substantially limited" in performing a major life activity under the ADA. Public Law 110–325, sec. 2(b)(4).

The Department did not receive any comments objecting to its proposed language. In the final rule, the Department retained these principles but has numbered each principle individually and deemed them "rules of construction" because they are intended to inform the determination of whether a particular activity is a major life activity.

Sections 35.108(d)(1) and 36.105(d)(1)—Substantially Limits

Overview. The ADA as amended directs that the term "substantially limits" shall be "interpreted consistently with the findings and purposes of the ADA Amendments Act." 42 U.S.C. 12102(4)(B). *See also* Findings and Purposes of the ADA Amendments Act, Public Law 110–325, sec. 2(a)–(b). In the

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[5] "Executive function" is an umbrella term that has been described as referring to "a constellation of cognitive abilities that include the ability to plan, organize, and sequence tasks and manage multiple tasks simultaneously." *See, e.g.* National Institute of Neurological Disorders and Stroke, *Domain Specific Tasks of Executive Functions, available at grants.nih.gov/grants/guide/notice-files/NOT-NS-04-012.html* (last visited Feb. 3, 2016).

[6] In *Bartlett* v. *N.Y. State Bd. of Law Exam'rs,* 970 F. Supp. 1094, 1117 (S.D.N.Y. 1997), *aff'd in part and vacated in part,* 156 F.3d 321 (2d Cir. 1998), *cert. granted, judgment vacated on other grounds,* 527 U.S. 1031 (1999), and *aff'd in part, vacated in part,* 226 F.3d 69 (2d Cir. 2000), then-Judge Sotomayor stated, "[I]n the modern era, where test-taking begins in the first grade, and standardized tests are a regular and often life-altering occurrence thereafter, both in school and at work, I find test-taking is within the ambit of 'major life activity.'" *See also Rawdin* v. *American Bd. of Pediatrics,* 985 F. Supp. 2d 636 (E.D. Pa. 2013), *aff'd. on other grounds,* 2014 U.S. App. LEXIS 17002 (3d Cir. Sept. 3, 2014).

NPRM, the Department proposed to add nine rules of construction at §§ 35.108(d) and 36.105(d) clarifying how to interpret the meaning of "substantially limits" when determining whether an individual's impairment substantially limits a major life activity. These rules of construction are based on the requirements of the ADA as amended and the clear mandates of the legislative history. Due to the insertion of the rules of construction, these provisions are renumbered in the final rule.

Sections 35.108(d)(1)(i) and 36.105(d)(1)(i)—Broad Construction, Not a Demanding Standard

In accordance with Congress's overarching directive to construe the term "disability" broadly, *see* 42 U.S.C. 12102(4)(A), the Department, in its NPRM, proposed §§ 35.108(d)(1)(i) and 36.105(d)(1)(i), which state: "The term 'substantially limits' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA." These provisions are also rooted in the Findings and Purposes of the ADA Amendments Act, in which Congress instructed that "the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis." *See* Public Law 110–325, sec. 2(b)(1), (4)–(5).

Several commenters on these provisions supported the Department's proposal to include these rules of construction, noting that they were in keeping with both the statutory language and Congress's intent to broaden the definition of "disability" and restore expansive protection under the ADA. Some of these commenters stated that, even after the passage of the ADA Amendments Act, some covered entities continued to apply a narrow definition of "disability."

Other commenters expressed concerns that the proposed language would undermine congressional intent by weakening the meaning of the word "substantial." One of these commenters asked the Department to define the term "substantially limited" to include an element of materiality, while other commenters objected to the breadth of these provisions and argued that it would make the pool of people who might claim disabilities too large, allowing those without substantial limitations to be afforded protections under the law. Another commenter expressed concern about the application of the regulatory language to the diagnosis of learning disabilities and ADHD.

The Department considered all of these comments and declines to provide a definition of the term "substantially limits" or make any other changes to these provisions in the final rule. The Department notes that Congress considered and expressly rejected including language defining the term "substantially limits": "We have concluded that adopting a new, undefined term that is subject to widely disparate meanings is not the best way to achieve the goal of ensuring consistent and appropriately broad coverage under this Act. The resulting need for further judicial scrutiny and construction will not help move the focus from the threshold issue of disability to the primary issue of discrimination." 154 Cong. Rec. S8441. (daily ed. Sept. 16, 2008) (Statement of the Managers).

The Department believes that the nine rules of construction interpreting the term "substantially limits" provide ample guidance on determining whether an impairment substantially limits a major life activity and are sufficient to ensure that covered entities will be able to understand and apply Congress's intentions with respect to the breadth of the definition of "disability."

Moreover, the commenters' arguments that these provisions would undermine congressional intent are unsupported. To the contrary, Congress clearly intended the ADA Amendments Act to expand coverage: "The managers have introduced the ADA Amendments Act of 2008 to restore the proper balance and application of the ADA by clarifying and broadening the definition of disability, and to increase eligibility for the protections of the ADA. It is our expectation that because this bill makes the definition of disability more generous, some people who were not covered before will now be covered." 154 Cong. Rec. S8441 (daily ed. Sept. 16, 2008) (Statement of the Managers).

The Department has also considered the comments expressed about the interplay between the proposed regulatory language and the diagnosis of learning disabilities and ADHD disorders. The Department believes that the revised definition of "disability," including, in particular, the provisions construing "substantially limits," strikes the appropriate balance to effectuate Congress's intent when it passed the ADA Amendments Act, and will not modify its regulatory language in response to these comments.

Sections 35.108(d)(1)(ii) and 36.105(d)(1)(ii)—Primary Object of ADA Cases

In the ADA Amendments Act, Congress directed that rules of construction should ensure that "substantially limits" is construed in accordance with the findings and purposes of the statute. *See* 42 U.S.C. 12102(4)(B). One of the purposes of the Act was to convey that "the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with the obligations and to convey that the question of whether an individuals' impairment is a disability should not demand extensive analysis." Public Law 110–325, sec. 2(b)(5). The legislative history clarifies that: "Through this broad mandate [of the ADA], Congress sought to protect anyone who is treated less favorably because of a current, past, or perceived disability. Congress did not intend for the threshold question of disability to be used as a means of excluding individuals from coverage. Nevertheless, as the courts began interpreting and applying the definition of disability strictly, individuals have been excluded from the protections that the ADA affords because they are unable to meet the demanding judicially imposed standard for qualifying as disabled."). H.R. Rep. No. 110–730, pt. 2, at 5 (2008) (House Committee on the Judiciary).

In keeping with Congress's intent and the language of the ADA Amendments Act, the rules of construction at proposed §§ 35.108(d)(1)(iii) and 36.105(d)(1)(iii) make clear that the primary object of attention in ADA cases should be whether public or other covered entities have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity. In particular, the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.

A number of commenters expressed support for these rules of construction, noting that they reinforced Congress's intent in ensuring that the primary focus will be on compliance. Several commenters objected to the use of the word "cases" in these provisions, stating that it lacked clarity. The word "cases" tracks the language of the ADA Amendments Act and the Department declines to change the term.

A few commenters objected to these provisions because they believed that the language would be used to supersede or otherwise change the required analysis of requests for reasonable modifications or testing accommodations. *See* 28 CFR 35.130(b)(7), 36.302, 36.309. The Department disagrees with these commenters. These rules of construction relate only to the determination of coverage under the ADA. They do not change the analysis of whether a discriminatory act has taken place, including the determination as to whether an individual is entitled to a reasonable modification or testing accommodation. *See* discussion of §§ 35.108(d)(1)(vii) and 36.105(d)(1)(vii) below.

The Department retained the language of these rules of construction in the final rule except that in the title III regulatory text it has changed the reference from "covered entity" to "public accommodation." The Department also renumbered these provisions as §§ 35.108(d)(1)(ii) and 36.105(d)(1)(ii).

Sections 35.108(d)(1)(iii) and 36.105(d)(1)(iii)—Impairment Need Not Substantially Limit More Than One Major Life Activity

Proposed §§ 35.108(d)(1)(viii) and 36.105(d)(1)(viii) stated that "[a]n impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment." *See* 42 U.S.C. 12102(4)(C). This language reflected the statutory intent to reject court decisions that had required individuals to show that an impairment substantially limits more than one major life activity. *See* 154 Cong. Rec. S8841–44 (daily ed. Sept. 16, 2008) (Statement of the Managers). Applying this principle, for example, an individual seeking to establish coverage under the ADA need not show a substantial limitation in the ability to learn if that individual is substantially limited in another major life activity, such as walking, or the functioning of the nervous or endocrine systems. The proposed rule also was intended to clarify that the ability to perform one or more particular tasks within a broad category of activities does not preclude coverage under the ADA. *See* H.R. Rep. No. 110–730, pt. 2, at 19 & n.52 (2008) (House Committee on the Judiciary). For instance, an individual with cerebral palsy could have a capacity to perform certain manual tasks yet nonetheless show a substantial limitation in the ability to perform a "broad range" of manual tasks.

The Department received one comment specifically supporting this provision and none opposing it. The Department is retaining this language in the final rule although it is renumbered and is found at §§ 35.108(d)(1)(iii) and 36.105(d)(1)(iii).

Sections 35.108(d)(1)(iv) and 36.105(d)(1)(iv)—Impairments That Are Episodic or in Remission

The ADA as amended provides that "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." 42 U.S.C. 12102(4)(D). In the NPRM, the Department proposed §§ 35.108(d)(1)(vii) and 36.105(d)(1)(vii) to directly incorporate this language. These provisions are intended to reject the reasoning of court decisions concluding that certain individuals with certain conditions—such as epilepsy or post traumatic stress disorder—were not protected by the ADA because their conditions were episodic or intermittent. The legislative history provides that "[t]his . . . rule of construction thus rejects the reasoning of the courts in cases like *Todd* v. *Academy Corp.* [57 F. Supp. 2d 448, 453 (S.D. Tex. 1999)] where the court found that the plaintiff's epilepsy, which resulted in short seizures during which the plaintiff was unable to speak and experienced tremors, was not sufficiently limiting, at least in part because those seizures occurred episodically. It similarly rejects the results reached in cases [such as *Pimental* v. *Dartmouth-Hitchcock Clinic,* 236 F. Supp. 2d 177, 182–83 (D.N.H. 2002)] where the courts have discounted the impact of an impairment [such as cancer] that may be in remission as too short-lived to be substantially limiting. It is thus expected that individuals with impairments that are episodic or in remission (*e.g.,* epilepsy, multiple sclerosis, cancer) will be able to establish coverage if, when active, the impairment or the manner in which it manifests (*e.g.,* seizures) substantially limits a major life activity." H.R. Rep. No. 110–730, pt. 2, at 19–20 (2008) (House Committee on the Judiciary).

Some examples of impairments that may be episodic include hypertension, diabetes, asthma, major depressive disorder, bipolar disorder, and schizophrenia. The fact that the periods during which an episodic impairment is active and substantially limits a major life activity may be brief or occur infrequently is no longer relevant to determining whether the impairment substantially limits a major life activity. For example, a person with post-traumatic stress disorder who experiences intermittent flashbacks to traumatic events is substantially limited in brain function and thinking.

The Department received three comments in response to these provisions. Two commenters supported this provision and one commenter questioned about how school systems should provide reasonable modifications to students with disabilities that are episodic or in remission. As discussed elsewhere in this guidance, the determination of what is an appropriate modification is separate and distinct from the determination of whether an individual is covered by the ADA, and the Department will not modify its regulatory language in response to this comment.

Sections 35.108(d)(1)(v) and 36.105(d)(1)(v)—Comparisons to Most People in the Population, and Impairment Need Not Prevent or Significantly or Severely Restrict a Major Life Activity

In the legislative history of the ADA Amendments Act, Congress explicitly recognized that it had always intended that determinations of whether an impairment substantially limits a major life activity should be based on a comparison to most people in the population. The Senate Managers Report approvingly referenced the discussion of this requirement in the committee report from 1989. *See* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers) (citing S. Rep. No. 101–116, at 23 (1989)). The preamble to the Department's 1990 title II and title III regulations also referenced that the impact of an individual's impairment should be based on a comparison to most people. *See* 56 FR 35694, 35699 (July 26, 1991).

Consistent with its longstanding intent, Congress directed, in the ADA Amendments Act, that disability determinations "should not demand extensive analysis" and that impairments do not need to rise to the level of "prevent[ing] or severely restrict[ing] the individual from doing activities that are of central importance to most people's daily lives." *See* Public Law 110–325, sec. 2(b)(4)–(5). In giving this direction, Congress sought to correct the standard that courts were applying to determinations of disability after *Toyota,* which had created "a situation in which physical or mental impairments that would previously have been found to constitute disabilities are not considered disabilities under the Supreme Court's narrower standard." 154 Cong. Rec. S8840–8841 (daily ed. Sept. 16, 2008) (Statement of the Managers). The ADA Amendments Act thus abrogates *Toyota*'s holding by mandating that "substantially limited" must no longer create "an inappropriately high level of limitation." *See* Public Law 110–325, sec. 2(b)(4)–(5) and 42 U.S.C. 12102(4)(B). For example, an individual with carpal tunnel syndrome, a physical impairment, can demonstrate that the impairment substantially limits the major life activity of writing even if the impairment does not prevent or severely restrict the individual from writing.

Accordingly, proposed §§ 35.108(d)(1)(ii) and 36.105(d)(1)(ii) state that an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. However, an impairment does not need to prevent, or significantly or severely restrict, an individual from performing a major life activity in order to be substantially limiting. The proposed language in the NPRM was rooted in the corrective nature of the ADA Amendments Act and its explicit rejection of the strict standards imposed under *Toyota* and its progeny. *See* Public Law 110–325, sec. 2(b)(4).

The Department received several comments on these provisions, none of which recommended modification of the regulatory language. A few commenters raised concerns that are further addressed in the "Condition, manner, or duration" section below, regarding the Department's inclusion in the NPRM preamble of a reference to possibly using similarly situated individuals as the basis of comparison. The Department has removed this discussion and clarified that it does not endorse reliance on similarly situated individuals to demonstrate substantial limitations. For example, the Department recognizes that when determining whether an elderly person is substantially limited in a major life activity, the proper comparison is most people in the general population, and not similarly situated elderly individuals. Similarly, someone with ADHD should be compared to most people in the general population, most of whom do not have ADHD. Other commenters expressed interest in the possibility that, in some cases, evidence to support an assertion that someone has an impairment might simultaneously be used to demonstrate that the impairment is substantially limiting. These commenters approvingly referenced the EEOC's interpretive guidance for its ADA Amendments Act regulation, which provided an example of an individual with a learning disability. *See* 76 FR 16978, 17009 (Mar. 25, 2011). In that example, evidence gathered to demonstrate the impairment of a learning disability showed a discrepancy between the person's age, measured intelligence, and education and that person's actual versus expected achievement. The EEOC noted that such individuals also likely would be able to demonstrate substantial limitations caused by that impairment to the major life activities of learning, reading, or thinking, when compared to most people in the general population, especially when the ameliorative effects of mitigating measures were set aside. The Department concurs with this view.

Finally, the Department added an explicit statement recognizing that not every impairment will constitute a disability within the meaning of the section. This language echoes the Senate Statement of Managers, which clarified that: "[N]ot every individual with a physical or mental impairment is covered by the first prong of the definition of disability in the ADA. An impairment that does not substantially limit a major life activity is not a disability under this prong." 154 Cong. Rec. S8841 (daily ed. Sept. 16, 2008) (Statement of the Managers).

Sections 35.108(d)(1)(vi) and 36.105(d)(1)(vi)—"Substantially Limits" Shall Be Interpreted To Require a Lesser Degree of Functional Limitation Than That Required Prior to the ADA Amendments Act

In the NPRM, proposed §§ 35.108(d)(1)(iv) and 36.105(d)(1)(iv) state that determining whether an impairment substantially limits a major life activity requires an individualized assessment. But, the interpretation and application of the term "substantially limits" for this assessment requires a lower degree of functional limitation than the standard applied prior to the ADA Amendments Act.

These rules of construction reflect Congress's concern that prior to the adoption of the ADA Amendments Act, courts were using too high a standard to determine whether an impairment substantially limited a major life activity. *See* Public Law 110–325, sec. 2(b)(4)–(5); *see also* 154 Cong. Rec. S8841 (daily ed. Sept. 16, 2008) (Statement of the Managers) ("This bill lowers the standard for determining whether an impairment constitute[s] a disability and reaffirms the intent of Congress that the definition of disability in the ADA is to be interpreted broadly and inclusively.").

The Department received no comments on these provisions. The text of these provisions is unchanged in the final rule, although they have been renumbered as §§ 35.108(d)(1)(vi) and 36.105(d)(1)(vi).

Sections §§ 35.108(d)(1)(vii) and 36.105(d)(1)(vii)—Comparison of Individual's Performance of Major Life Activity Usually Will Not Require Scientific, Medical, or Statistical Analysis

In the NPRM, the Department proposed at §§ 35.108(d)(1)(v) and 36.105(d)(1)(v) rules of construction making clear that the comparison of an individual's performance of a major life activity to that of most people in the general population usually will not require scientific, medical, or statistical evidence. However, this rule is not intended to prohibit or limit the use of scientific, medical, or statistical evidence in making such a comparison where appropriate.

These rules of construction reflect Congress's rejection of the demanding standards of proof imposed upon individuals with disabilities who tried to assert coverage under the ADA prior to the adoption of the ADA Amendments Act. In passing the Act, Congress rejected the idea that the disability determination should be "an onerous burden for those seeking accommodations or modifications." *See* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers). These rules make clear that in most cases, people with impairments will not need to present scientific, medical, or statistical evidence to support their assertion that an impairment is substantially limiting compared to most people in the general population. Instead, other types of evidence that are less onerous to collect, such as statements or affidavits of affected individuals, school records, or determinations of disability status under other statutes, should, in most cases, be considered adequate to establish that an impairment is substantially limiting. The Department's proposed language reflected Congress's intent to ensure that individuals with disabilities are not precluded from seeking protection under the ADA because of an overbroad, burdensome, and generally unnecessary requirement.

The Department received several comments in support of these provisions and a number of comments opposing all or part of them. One commenter representing individuals with disabilities expressed support for the proposed language, noting that "[m]any people with disabilities have limited resources and requiring them to hire an expert witness to confirm their disability would pose an insurmountable barrier that could prevent them from pursuing their ADA cases."

Commenters representing testing entities objected to this language arguing that they needed scientific, medical, or statistical evidence in order to determine whether an individual has a learning disability or ADHD. These commenters argued that, unlike other disabilities, assessment of learning disabilities and ADHD require scientific, medical, or statistical evidence because such disabilities have no overt symptoms, cannot be readily observed, and lack medical or scientific verifiability. One commenter stated that the proposed language "favor[s] expedience over evidence-based guidance."

In opposing these provisions, these commenters appear to conflate proof of the existence of an impairment with the analysis of how an impairment substantially limits a major life activity. These provisions address only how to evaluate whether an impairment substantially limits a major life activity, and the Department's proposed language appropriately reflects Congress's intent to ensure that individuals with disabilities are not precluded from seeking protection under the ADA because of overbroad, burdensome, and generally unnecessary evidentiary requirements. Moreover, the Department disagrees with the commenters' suggestion that an individual with ADHD or a specific learning disability can never demonstrate how the impairment substantially limits a major life activity without scientific, medical, or statistical evidence. Scientific, medical, or statistical evidence usually will not be necessary to determine whether an individual with a disability is substantially limited in a major life activity. However, as the rule notes, such evidence may be appropriate in some circumstances.

One commenter suggested that the words "where appropriate" be deleted from these provisions in the final rule out of concern that they may be used to preclude individuals with disabilities from proffering scientific or medical evidence in support of a claim of coverage under the ADA. The Department disagrees with the commenter's reading of these provisions. Congress recognized that some people may choose to support their claim by presenting scientific or medical evidence and made clear that "plaintiffs should not be constrained from offering evidence needed to establish that their impairment is substantially limiting." *See* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers). The language "where appropriate" allows for those circumstances where an individual chooses to present such evidence, but makes clear that in most cases presentation of such evidence shall not be necessary.

Finally, although the NPRM did not propose any changes with respect to the title III regulatory requirements applicable to the provision of testing accommodations at 28 CFR 36.309, one commenter requested revisions to § 36.309 to acknowledge the changes to regulatory language in the definition of "disability." Another commenter noted that the proposed changes to the regulatory definition of "disability" warrant new agency guidance on how the ADA applies to requests for testing accommodations.

The Department does not consider it appropriate to include provisions related to testing accommodations in the definitional sections of the ADA regulations. The determination of disability, and thus coverage under the ADA, is governed by the statutory and regulatory definitions and the related rules of construction. Those provisions do not speak to what testing accommodations an individual with a disability is entitled to under the ADA nor to the related questions of what a testing entity may request or require from an individual with a disability who seeks testing accommodations. Testing entities' substantive obligations are governed by 42 U.S.C. 12189 and the implementing regulation at 28 CFR 36.309. The implementing regulation clarifies that private entities offering covered examinations need to make sure that any request for required documentation is reasonable and limited to the need for the requested modification, accommodation, or auxiliary aid or service. Furthermore, when considering requests for modifications, accommodations, or auxiliary aids or services, the entity should give considerable weight to documentation of past modifications, accommodations, or auxiliary aids or services received in similar testing situations or provided in response to an Individualized Education Program (IEP) provided under the IDEA or a plan describing services provided under section 504 of the Rehabilitation Act of 1973 (often referred as a Section 504 Plan).

Contrary to the commenters' suggestions, there is no conflict between the regulation's definitional provisions and title III's testing accommodation provisions. The first addresses the core question of who is covered under the definition of "disability," while the latter sets forth requirements related to documenting the need for particular testing accommodations. To the extent that testing entities are urging conflation of the analysis for establishing disability with that for determining required testing accommodations, such an approach would contradict the clear delineation in the statute between the determination of disability and the obligations that ensue.

Accordingly, in the final rule, the text of these provisions is largely unchanged, except that the provisions are renumbered as §§ 35.108(d)(1)(vii) and 36.108(d)(1)(vii), and the Department added "the presentation of," in the second sentence, which was included in the corresponding provision of the EEOC final rule. *See* 29 CFR 1630.2(j)(1)(v).

Sections 35.108(d)(1)(viii) and 36.105(d)(1)(viii)—Determination Made Without Regard to the Ameliorative Effects of Mitigating Measures

The ADA as amended expressly prohibits any consideration of the ameliorative effects of mitigating measures when determining whether an individual's impairment substantially limits a major life activity, except for the ameliorative effects of ordinary eyeglasses or contact lenses. 42 U.S.C. 12102(4)(E). The statute provides an illustrative, and non-exhaustive list of different types of mitigating measures. *Id.*

In the NPRM, the Department proposed §§ 35.108(d)(2)(vi) and 36.105(d)(2)(vi), which tracked the statutory language regarding consideration of mitigating measures. These provisions stated that the ameliorative effects of mitigating measures should not be considered when determining whether an impairment substantially limits a major life activity. However, the beneficial effects of ordinary eyeglasses or contact lenses should be considered when determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses or contact lenses refer to lenses that are intended to fully correct visual acuity or to eliminate refractive errors. Proposed §§ 35.108(d)(4) and 36.105(d)(4), discussed below, set forth examples of mitigating measures.

A number of commenters agreed with the Department's proposed language and no commenters objected. Some commenters, however, asked the Department to add language to these sections stating that, although the ameliorative effects of mitigating measures may not be considered in determining whether an individual has a covered disability, they may be considered in determining whether an individual is entitled to specific testing accommodations or reasonable modifications. The ADA Amendments Act revised the definition of "disability" and the Department agrees that the Act's prohibition on assessing the ameliorative effects of mitigating measures applies only to the determination of whether an individual meets the definition of "disability." The Department declines to add the requested language, however, because it goes beyond the scope of this rulemaking by addressing ADA requirements that are not related to the definition of "disability." These rules of construction do not apply to the requirements to provide reasonable modifications under §§ 35.130(b)(7) and 36.302 or testing accommodations under § 36.309 in the title III regulations. The Department disagrees that further clarification is needed at this point and declines to modify these provisions except that they are now renumbered as §§ 35.108(d)(1)(viii) and § 36.105(d)(1)(viii).

The Department notes that in applying these rules of construction, evidence showing that an impairment would be substantially limiting in the absence of the ameliorative effects of mitigating measures could include evidence of limitations that a person experienced prior to using a mitigating measure or evidence concerning the expected course of a particular disorder absent mitigating measures.

The determination of whether an individual's impairment substantially limits a major life activity is unaffected by an individual's choice to forgo mitigating measures. For individuals who do not use a mitigating measure (including, for example, medication or auxiliary aids and services that might alleviate the effects of an impairment), the availability of such measures has no bearing on whether the impairment substantially limits a major life activity. The limitations posed by the impairment on the individual and any negative (non-ameliorative) effects of mitigating measures will serve as the foundation for a determination of whether an impairment is substantially limiting. The origin of the impairment, whether its effects can be mitigated, and any ameliorative effects of mitigating measures that are employed may not be considered in determining if the impairment is substantially limiting.

Sections 35.108(d)(1)(ix) and 36.105(d)(1)(ix)—Impairment That Lasts Less Than Six Months Can Still Be a Disability Under First Two Prongs of the Definition

In §§ 35.108(d)(1)(ix) and 36.105(d)(1)(ix), the NPRM proposed rules of construction noting that the six-month "transitory" part of the "transitory and minor" exception does not apply to the "actual disability" or "record of" prongs of the definition of "disability." Even if an impairment may last or is expected to last six months or less, it can be substantially limiting.

The ADA as amended provides that the "regarded as" prong of the definition of "disability" does "not apply to impairments that are [both] transitory and minor." 42 U.S.C. 12102(3)(B). "Transitory impairment" is defined as "an impairment with an actual or expected duration of six months or less." *Id.* The statute does not define the term "minor." Whether an impairment is both "transitory and minor" is a question of fact that is dependent upon individual circumstances. The ADA as amended contains no such provision with respect to the first two prongs of the definition of "disability"—"actual disability," and "record of" disability. The application of the "transitory and minor" exception to the "regarded as" prong is addressed in §§ 35.108(f) and 36.105(f).

The Department received two comments on this proposed language. One commenter recommended that the Department delete this language and "replace it with language clarifying that if a condition cannot meet the lower threshold of impairment under the third prong, it cannot meet the higher threshold of a disability under the first and second prongs." The Department declines to modify these provisions because the determination of whether an individual satisfies the requirements of a particular prong is not a comparative determination between the three means of demonstrating disability under the ADA. The Department believes that the suggested language would create confusion because there are significant differences between the first two prongs and the third prong. In addition, the Department believes its proposed language is in keeping with the ADA Amendments Act and the supporting legislative history.

The other commenter suggested that the Department add language to provide greater clarity with respect to the application of the transitory and minor exception to the "regarded as prong." The Department does not believe that additional language should be added to these rules of construction, which relate only to whether there is a six-month test for the first two prongs of the definition. As discussed below, the Department has revised both the regulatory text at §§ 35.108(f) and 36.105(f) and its guidance on the application of the "transitory and minor" exception to the "regarded as" prong. *See* discussion below.

Sections 35.108(d)(2) and 36.105(d)(2)—Predictable Assessments

In the NPRM, proposed §§ 35.108(d)(2) and 36.105(d)(2) set forth examples of impairments that should easily be found to substantially limit one or more major life activities. These provisions recognized that while there are no "per se" disabilities, for certain types of impairments the application of the various principles and rules of construction concerning the definition of "disability" to the individualized assessment would, in virtually all cases, result in the conclusion that the impairment substantially limits a major life activity. Thus, the necessary individualized assessment of coverage premised on these types of impairments should be particularly simple and straightforward. The purpose of the "predictable assessments" provisions is to simplify consideration of those disabilities that virtually always create substantial limitations to major life activities, thus satisfying the statute's directive to create clear, consistent, and enforceable standards and ensuring that the inquiry of "whether an individual's impairment is a disability under the ADA should not demand extensive analysis." *See* Public Law 110–325, sec. 2(b)(1), (5). The impairments identified in the predictable assessments provision are a non-exhaustive list of examples of the kinds of disabilities that meet these criteria and, with one exception, are consistent with the corresponding provision in the EEOC ADA Amendments Act rule. *See* 29 CFR 1630.2(j)(3)(iii).[7]

The Department believes that the predictable assessments provisions comport with the ADA Amendments Act's emphasis on adopting a less burdensome and more expansive definition of "disability." The provisions are rooted in the application of the statutory changes to the meaning and interpretation of the definition of "disability" contained in the ADA Amendments Act and flow from the rules of construction set forth in §§ 35.108(a)(2)(i), 36.105(a)(2)(i), 35.108(c)(2)(i) and (ii), 36.105(c)(2)(i) and (ii). These rules of construction and other specific provisions require the broad construction of the definition of "disability" in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. In addition, they lower the standard to be applied to "substantially limits," making clear that an impairment need not prevent or significantly restrict an individual from performing a major life activity; clarify that major life activities include major bodily functions; elucidate that impairments that are episodic or in remission are disabilities if they would be substantially limiting when active; and incorporate the requirement that the ameliorative effects of mitigating measures (other than ordinary eyeglasses or contact lenses) must be disregarded in assessing whether an individual has a disability.

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[7] In the NPRM, the Department proposed adding "traumatic brain injury" to the predictable assessments list.

Several organizations representing persons with disabilities and the elderly, constituting the majority of commenters on these provisions, supported the inclusion of the predictable assessments provisions. One commenter expressed strong support for the provision and recommended that it closely track the corresponding provision in the EEOC title I rule, while another noted its value in streamlining individual assessments. In contrast, some commenters from educational institutions and testing entities recommended the deletion of these provisions, expressing concern that it implies the existence of "per se" disabilities, contrary to congressional intent that each assertion of disability should be considered on a case-by-case basis. The Department does not believe that the predictable assessment provisions constitutes a "per se" list of disabilities and will retain it. These provisions highlight, through a non-exhaustive list, impairments that virtually always will be found to substantially limit one or more major life activities. Such impairments still warrant individualized assessments, but any such assessments should be especially simple and straightforward.

The legislative history of the ADA Amendments Act supports the Department's approach in this area. In crafting the Act, Congress hewed to the ADA definition of "disability," which was modeled on the definition of "disability" in the Rehabilitation Act, and indicated that it wanted courts to interpret the definition as it had originally been construed. *See* H.R. Rep. No. 110–730, pt. 2, at 6 (2008). Describing this goal, the legislative history states that courts had interpreted the Rehabilitation Act definition "broadly to include persons with a wide range of physical and mental impairments such as epilepsy, diabetes, multiple sclerosis, and intellectual and developmental disabilities . . . even where a mitigating measure—like medication or a hearing aid—might lessen their impact on the individual." *Id.; see also id.* at 9 (referring to individuals with disabilities that had been covered under section 504 of the Rehabilitation Act and that Congress intended to include under the ADA—"people with serious health conditions like epilepsy, diabetes, cancer, cerebral palsy, multiple sclerosis, intellectual and developmental disabilities"); *id.* at 6, n.6 (citing cases also finding that cerebral palsy, hearing impairments, intellectual disabilities, heart disease, and vision in only one eye were disabilities under the Rehabilitation Act); *id.* at 10 (citing testimony from Rep. Steny H. Hoyer, one of the original lead sponsors of the ADA in 1990, stating that "[w]e could not have fathomed that people with diabetes, epilepsy, heart conditions, cancer, mental illnesses and other disabilities would have their ADA claims denied because they would be considered too functional to meet the definition of disability"); 2008 Senate Statement of Managers at 3 (explaining that "we [we]re faced with a situation in which physical or mental impairments that would previously have been found to constitute disabilities [under the Rehabilitation Act] [we]re not considered disabilities" and citing individuals with impairments such as amputation, intellectual disabilities, epilepsy, multiple sclerosis, diabetes, muscular dystrophy, and cancer as examples).

Some commenters asked the Department to add certain impairments to the predictable assessments list, while others asked the Department to remove certain impairments. Commenters representing educational and testing institutions urged that, if the Department did not delete the predictable assessment provisions, then the list should be modified to remove any impairments that are not obvious or visible to third parties and those for which functional limitations can change over time. One commenter cited to a pre-ADA Amendments Act reasonable accommodations case, which included language regarding the uncertainty facing employers in determining appropriate reasonable accommodations when mental impairments often are not obvious and apparent to employers. *See Wallin* v. *Minnesota Dep't of Corrections,* 153 F.3d 681, 689 (8th Cir. 1998). This commenter suggested that certain impairments, including autism, depression, post-traumatic stress disorder, and obsessive-compulsive disorder, should not be deemed predictable assessments because they are not immediately apparent to third parties. The Department disagrees with this commenter, and believes that it is appropriate to include these disabilities on the list of predictable assessments. Many disabilities are less obvious or may be invisible, such as cancer, diabetes, HIV infection, schizophrenia, intellectual disabilities, and traumatic brain injury, as well as those identified by the commenter. The likelihood that an impairment will substantially limit one or more major life activities is unrelated to whether or not the disability is immediately apparent to an outside observer. Therefore, the Department will retain the examples that involve less apparent disabilities on the list of predictable assessments.

The Department believes that the list accurately illustrates impairments that virtually always will result in a substantial limitation of one or more major life activities. The Department recognizes that impairments are not always static and can result in different degrees of functional limitation at different times, particularly when mitigating measures are used. However, the ADA as amended anticipates variation in the extent to which impairments affect major life activities, clarifying that impairments that are episodic or in remission nonetheless are disabilities if they would be substantially limiting when active and requiring the consideration of disabilities without regard to ameliorative mitigating measures. The Department does not believe that limiting the scope of its provisions addressing predictable assessments only to those disabilities that would never vary in functional limitation would be appropriate.

Other commenters speaking as individuals or representing persons with disabilities endorsed the inclusion of some impairments already on the list, including traumatic brain injury, sought the inclusion of additional impairments, requested revisions to some descriptions of impairments, or asked for changes to the examples of major life activities linked to specific impairments.

Several commenters requested the expansion of the predictable assessments list, in particular to add specific learning disabilities. Some commenters pointed to the ADA Amendments Act's legislative history, which included Representative Stark's remarks that specific learning disabilities are "neurologically based impairments that substantially limit the way these individuals perform major life activities, like reading or learning, or the time it takes to perform such activities." 154 Cong. Rec. H8291 (daily ed. Sept. 17, 2008). Others recommended that some specific types of specific learning disabilities, including dyslexia, dyscalculia, dysgraphia, dyspraxia, and slowed processing speed should be referenced as predictable assessments. With respect to the major life activities affected by specific learning disabilities, commenters noted that specific learning disabilities are neurologically based and substantially limit learning, thinking, reading, communicating, and processing speed.

Similarly, commenters recommended the inclusion of ADHD, urging that it originates in the brain and affects executive function skills including organizing, planning, paying attention, regulating emotions, and self-monitoring. One commenter noted that if ADHD meets the criteria established in the DSM–5, then it would consistently meet the criteria to establish disability under the ADA. The same commenter noted that ADHD is brain based and affects the major life activity of executive function. Another commenter suggested that ADHD should be included and should be identified as limiting brain function, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Other commenters urged the inclusion of panic disorders, anxiety disorder, cognitive disorder, and post-concussive disorder. A number of commenters noted that the exclusion of impairments from the predictable assessments list could be seen as supporting an inference that the impairments that are not mentioned should not easily be found to be disabilities.

The Department determined that it will retain the language it proposed in the NPRM and will not add or remove any impairments from this list. As discussed above, the list is identical to the EEOC's predictable assessments list, at 29 CFR 1630.2(g)(3)(iii), except that the Department's NPRM added traumatic brain injury. The Department received support for including traumatic brain injury and did not receive any comments recommending the removal of traumatic brain injury from the list; thus, we are retaining it in this final rule.

The Department's decision to track the EEOC's list, with one minor exception, stems in part from our intent to satisfy the congressional mandate for "clear, strong, consistent, enforceable standards." A number of courts already have productively applied the EEOC's predictable assessments provision, and the Department believes that it will continue to serve as a useful, common-sense tool in promoting judicial efficiency. It is important to note, however, that the failure to include any impairment in the list of examples of predictable assessments does not indicate that that impairment should be subject to undue scrutiny.

Some commenters expressed concern about the major life activities that the Department attributed to particular impairments. Two commenters sought revision of the major life activities attributed to intellectual disabilities, suggesting that it would be more accurate to reference cognitive function and learning, instead of reading, learning, and problem solving. One commenter recommended attributing the major life activity of brain function to autism rather than learning, social interaction, and communicating. The Department determined that it will follow the EEOC's model and, with respect to both intellectual disabilities and autism, it will reference the major bodily function of brain function. By using the term "brain function" to describe the system affected by various mental impairments, the Department intends to capture functions such as the brain's ability to regulate thought processes and emotions.

The Department considers it important to reiterate that, just as the list of impairments in these sections is not comprehensive, the list of major bodily functions or other major life activities linked to those impairments are not exhaustive. The impairments identified in these sections, may affect a wide range of major bodily functions and other major life activities. The Department's specification of certain major life activities with respect to particular impairments simply provides one avenue by which a person might elect to demonstrate that he or she has a disability.

The Department recognizes that impairments listed in §§ 35.108(d)(2) and 36.105(d)(2) may substantially limit other major life activities in addition to those listed in the regulation. For example, diabetes may substantially limit major life activities including eating, sleeping, and thinking. Major depressive disorder may substantially limit major life activities such as thinking, concentrating, sleeping, and interacting with others. Multiple sclerosis may substantially limit major life activities such as walking, bending, and lifting.

One commenter noted that the NPRM did not track the EEOC's language with respect to the manner in which it identified a major bodily function that is substantially limited by epilepsy, muscular dystrophy, or multiple sclerosis in 29 CFR 1630.2(j)(3)(iii). While the EEOC listed each of these three impairments individually, noting in each case that the major bodily function affected is neurological function, at 29 CFR 1630.2(j)(3)(iii), the NPRM grouped the three impairments and noted that they affect neurological function. In order to clarify that each of the three impairments may manifest a substantial limitation of neurological function, the final rule incorporates "each" immediately following the list of the three impairments. Similarly, the Department added an "each" to §§ 35.108(d)(2)(iii)(K) and 36.105(d)(2)(iii)(K) to make clear that each of the listed impairments substantially limits brain function.

Some commenters representing testing entities and educational institutions sought the insertion of language in the predictable assessment provisions that would indicate that individuals found to have disabilities are not, by virtue of a determination that they have a covered disability, eligible for a testing accommodation or a reasonable modification. The Department agrees with these commenters that the determination of disability is a distinct determination separate from the determination of the need for a requested modification or a testing accommodation. The Department declines to add the language suggested by the commenters to §§ 35.108(d)(2) and 36.105(d)(2), however, because the requirements for reasonable modifications are addressed separately in §§ 35.130(b)(7) and 36.302 of the title II and III regulations and the requirements related to providing appropriate accommodations in testing and licensing are found at § 36.309.

Sections 35.108(d)(3) and 36.105(d)(3)—Condition, Manner, or Duration

Overview. Proposed §§ 35.108(d)(3) and 36.105(d)(3), both titled "Condition, manner[,] and duration," addressed how evidence related to condition, manner, or duration may be used to show how impairments substantially limit major life activities. These principles were first addressed in the preamble to the 1991 rule. At that time, the Department noted that "[a] person is considered an individual with a disability . . . when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people." 56 FR 35544, 35549 (July 26, 1991); *see also* S. Rep. No. 101–116, at 23 (1989).

These concepts were affirmed by Congress in the legislative history to the ADA Amendments Act: "We particularly believe that this test, which articulated an analysis that considered whether a person's activities are limited in condition, duration and manner, is a useful one. We reiterate that using the correct standard—one that is lower than the strict or demanding standard created by the Supreme Court in *Toyota*—will make the disability determination an appropriate threshold issue but not an onerous burden for those seeking accommodations or modifications. At the same time, plaintiffs should not be constrained from offering evidence needed to establish that their impairment is substantially limiting." 154 Cong. Rec. S8346 (Sept. 11, 2008). Noting its continued reliance on the functional approach to defining disability, Congress expressed its belief that requiring consistency with the findings and purposes of the ADA Amendments Act would "establish[ ] an appropriate functionality test for determining whether an individual has a disability." *Id.* While condition, manner, and duration are not required factors that must be considered, the regulations clarify that these are the types of factors that may be considered in appropriate cases. To the extent that such factors may be useful or relevant to show a substantial limitation in a particular fact pattern, some or all of them (and related facts) may be considered, but evidence relating to each of these factors often will not be necessary to establish coverage.

In the NPRM, proposed §§ 35.108(d)(3)(i) and 35.105(d)(3)(i) noted that the rules of construction at §§ 35.108(d)(1) and 35.105(d)(1) should inform consideration of how individuals are substantially limited in major life activities. Sections 35.108(d)(3)(ii) and 36.105(d)(3)(ii) provided examples of how restrictions on condition, manner, or duration might be interpreted and also clarified that the negative or burdensome side effects of medication or other mitigating measures may be considered when determining whether an individual has a disability. In §§ 35.108(d)(3)(iii) and 36.105(d)(3)(iii), the proposed language set forth a requirement to focus on how a major life activity is substantially limited, rather than on the ultimate outcome a person with an impairment can achieve.

The Department received comments on the condition, manner, or duration provision from advocacy groups for individuals with disabilities, from academia, from education and testing entities, and from interested individuals. Several advocacy organizations for individuals with disabilities and private individuals noted that the section title's heading was inconsistent with the regulatory text and sought the replacement of the "and" in the section's title, "Condition, manner, and duration," with an "or." Commenters expressed concern that retaining the "and" in the heading title would be inconsistent with congressional intent and would incorrectly suggest that individuals are subject to a three-part test and must demonstrate that an impairment substantially limits a major life activity with respect to condition, manner, and duration. The Department agrees that the "and" used in the title of the proposed regulatory provision could lead to confusion and a misapplication of the law and has revised the title so it now reads "Condition, manner, *or* duration." Consistent with the regulatory text, the revised heading makes clear that any one of the three descriptors—"condition," "manner," or "duration"—may aid in demonstrating that an impairment substantially limits a major life activity or a major bodily function.

Condition, Manner, or Duration

In the NPRM, proposed §§ 35.108(d)(3)(i) and 36.105(d)(3)(i) noted that the application of the terms "condition" "manner," or "duration" should at all times take into account the principles in § 35.108(d)(1) and § 36.105(d)(1), respectively, which referred to the rules of construction for "substantially limited." The proposed regulatory text also included brief explanations of the meaning of the core terms, clarifying that in appropriate cases, it could be useful to consider, in comparison to most people in the general population, the conditions under which an individual performs a major life activity; the manner in which an individual performs a major life activity; or the time it takes an individual to perform a major life activity, or for which the individual can perform a major life activity.

Several disability rights advocacy groups and individuals supported the NPRM approach, with some referencing the value of pointing to the rules of construction and their relevance to condition, manner, or duration considerations. Some commenters noted that it was helpful to highlight congressional intent that the definition of "disability" should be broadly construed and not subject to extensive analysis. Another commenter recommended introducing a clarification that, while the limitation imposed by an impairment must be important, it does not need to rise to the level of severely or significantly restricting the ability to perform a major life activity. Some commenters sought additional guidance regarding the meaning of the terms "condition," "manner," and "duration" and recommended the addition of more illustrative examples.

In response to commenters' concerns, the Department has modified the regulatory text in §§ 35.108(d)(3)(i) and 36.105(d)(3)(i) to reference all of the rules of construction rather than only those pertaining to "substantially limited." The Department also added §§ 35.108(d)(3)(iv) and 36.105(d)(3)(iv), further discussed below, to clarify that the rules of construction will not always require analysis of condition, manner, or duration, particularly with respect to certain impairments, such as those referenced in paragraph (d)(2)(iii) (predictable assessments). With these changes, the Department believes that the final rule more accurately reflects congressional intent. The Department also believes that clarifying the application of the rules of construction to condition, manner, or duration will contribute to consistent interpretation of the definition of "disability" and reduce inadvertent reliance on older cases that incorporate demanding standards rejected by Congress in the ADA Amendments Act.

It is the Department's view that the rules of construction offer substantial guidance about how condition, manner, or duration must be interpreted so as to ensure the expansive coverage intended by Congress. Except for this clarification, the Department did not receive comments opposing the proposed regulatory text on condition, manner, or duration in §§ 35.108(d)(3)(i) and 36.105(d)(3)(i) and did not make any other changes to these provisions.

Some commenters objected to language in the preamble to the NPRM which suggested that there might be circumstances in which the consideration of condition, manner, or duration might not include comparisons to most people in the general population. On reconsideration, the Department recognizes that this discussion could create confusion about the requirements. The Department believes that condition, manner, or duration determinations should be drawn in contrast to most people in the general population, as is indicated in the related rules of construction, at §§ 35.108(d)(1)(v) and 36.105(d)(1)(v).

Condition, Manner, or Duration Examples, Including Negative Effects of Mitigating Measures

Proposed §§ 35.108(d)(3)(ii) and 36.105(d)(3)(ii) set forth examples of the types of evidence that might demonstrate condition, manner, or duration limitations, including the way an impairment affects the operation of a major bodily function, the difficulty or effort required to perform a major life activity, the pain experienced when performing a major life activity, and the length of time it takes to perform a major life activity. These provisions also clarified that the non-ameliorative effects of mitigating measures may be taken into account to demonstrate the impact of an impairment on a major life activity. The Department's discussion in the NPRM preamble noted that such non-ameliorative effects could include negative side effects of medicine, burdens associated with following a particular treatment regimen, and complications that arise from surgery, among others. The preamble also provided further clarification of the possible applications of condition, manner, or duration analyses, along with several examples. Several commenters supported the proposed rule's incorporation of language and examples offering insight into the varied ways that limitations on condition, manner, or duration could demonstrate substantial limitation. One commenter positively noted that the language regarding the "difficulty, effort, or time required to perform a major life activity" could prove extremely helpful to individuals asserting a need for testing accommodations, as evidence previously presented regarding these factors was deemed insufficient to demonstrate the existence of a disability. Some commenters requested the insertion of additional examples and explanation in the preamble about how condition, manner or duration principles could be applied under the new rules of construction. Another commenter sought guidance on the specific reference points that should be used when drawing comparisons with most people in the general population. The commenter offered the example of delays in developmental milestones as a possible referent in evaluating children with speech-language disorders, but noted a lack of guidance regarding comparable referents for adults. The commenter also noted that guidance is needed regarding what average or acceptable duration might be with respect to certain activities. An academic commenter expressed support for the Department's reference to individuals with learning impairments using certain self-mitigating measures, such as extra time to study or taking an examination in a different format, and the relevance of these measures to condition, manner, and duration.

The Department did not receive comments opposing the NPRM language on condition, manner, or duration in §§ 35.108(d)(3)(ii) and 36.105(d)(3)(ii) and is not making any changes to this language. The Department agrees that further explanation and examples as provided below regarding the concepts of condition, manner, or duration will help clarify how the ADA Amendments Act has expanded the definition of "disability." An impairment may substantially limit the "condition" or "manner" in which a major life activity can be performed in a number of different ways. For example, the condition or manner in which a major life activity can be performed may refer to how an individual performs a major life activity; *e.g.*, the condition or manner under which a person with an amputated hand performs manual tasks will likely be more cumbersome than the way that most people in the general population would perform the same tasks. Condition or manner also may describe how performance of a major life activity affects an individual with an impairment. For example, an individual whose impairment causes pain or fatigue that most people would not experience when performing that major life activity may be substantially limited. Thus, the condition or manner under which someone with coronary artery disease performs the major life activity of walking would be substantially limited if the individual experiences shortness of breath and fatigue when walking distances that most people could walk without experiencing such effects. An individual with specific learning disabilities may need to approach reading or writing in a distinct manner or under different conditions than most people in the general population, possibly employing aids including verbalizing, visualizing, decoding or phonology, such that the effort required could support a determination that the individual is substantially limited in the major life activity of reading or writing.

Condition or manner may refer to the extent to which a major life activity, including a major bodily function, can be performed. In some cases, the condition or manner under which a major bodily function can be performed may be substantially limited when the impairment "causes the operation [of the bodily function] to over-produce or under-produce in some harmful fashion." *See* H.R. Rep. No. 110–730, pt. 2, at 17 (2008). For example, the endocrine system of a person with type I diabetes does not produce sufficient insulin. For that reason, compared to most people in the general population, the impairment of diabetes substantially limits the major bodily functions of endocrine function and digestion. Traumatic brain injury substantially limits the condition or manner in which an individual's brain functions by impeding memory and causing headaches, confusion, or fatigue—each of which could constitute a substantial limitation on the major bodily function of brain function.

"Duration" refers to the length of time an individual can perform a major life activity or the length of time it takes an individual to perform a major life activity, as compared to most people in the general population. For example, a person whose back or leg impairment precludes him or her from standing for more than two hours without significant pain would be substantially limited in standing, because most people can stand for more than two hours without significant pain. However, "[a] person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort." *See* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers) (quoting S. Rep. No. 101–116, at 23 (1989)). Some impairments, such as ADHD, may have two different types of impact on duration considerations. ADHD frequently affects both an ability to sustain focus for an extended period of time and the speed with which someone can process information. Each of these duration-related concerns could demonstrate that someone with ADHD, as compared to most people in the general population, takes longer to complete major life activities such as reading, writing, concentrating, or learning.

The Department reiterates that, because the limitations created by certain impairments are readily apparent, it would not be necessary in such cases to assess the negative side effects of a mitigating measure in determining that a particular impairment substantially limits a major life activity. For example, there likely would be no need to consider the burden that dialysis treatment imposes for someone with end-stage renal disease because the impairment would allow a simple and straightforward determination that the individual is substantially limited in kidney function.

One commenter representing people with disabilities asked the Department to recognize that, particularly with respect to learning disabilities, on some occasions the facts related to condition, manner, or duration necessary to reach a diagnosis of a learning disability also are sufficient to establish that the affected individual has a disability under the ADA. The Department agrees that the facts gathered to establish a diagnosis of an impairment may simultaneously satisfy the requirements for demonstrating limitations on condition, manner, or duration sufficient to show that the impairment constitutes a disability.

Emphasis on Limitations Instead of Outcomes

In passing the ADA Amendments Act, Congress clarified that courts had misinterpreted the ADA definition of "disability" by, among other things, inappropriately emphasizing the capabilities of people with disabilities to achieve certain outcomes. *See* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers). For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in one or more of the major life activities of reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, speak, write, or learn compared to most people in the general population. As the House Education and Labor Committee Report emphasized:

> [S]ome courts have found that students who have reached a high level of academic achievement are not to be considered individuals with disabilities under the ADA, as such individuals may have difficulty demonstrating substantial limitation in the major life activities of learning or reading relative to "most people." When considering the condition, manner or duration in which an individual with a specific learning disability performs a major life activity, it is critical to reject the assumption that an individual who performs well academically or otherwise cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking. As such, the Committee rejects the findings in *Price* v. *National Board of Medical Examiners*, *Gonzales* v. *National Board of Medical Examiners*, and *Wong* v. *Regents of University of California.*
>
> The Committee believes that the comparison of individuals with specific learning disabilities to "most people" is not problematic unto itself, but requires a careful analysis of the method and manner in which an individual's impairment limits a major life activity. For the majority of the population, the basic mechanics of reading and writing do not pose extraordinary lifelong challenges; rather, recognizing and forming letters and words are effortless, unconscious, automatic processes. Because specific learning disabilities are neurologically-based impairments, the process of reading for an individual with a reading disability (*e.g.*, dyslexia) is word-by-word, and otherwise cumbersome, painful, deliberate and slow—throughout life. The Committee expects that individuals with specific learning disabilities that substantially limit a major life activity will be better protected under the amended Act.

H.R. Rep. No. 110–730 pt. 1, at 10–11 (2008).

Sections 35.108(d)(3)(iii) and 36.105(d)(3)(iii) of the proposed rule reflected congressional intent and made clear that the outcome an individual with a disability is able to achieve is not determinative of whether an individual is substantially limited in a major life activity. Instead, an individual can demonstrate the extent to which an impairment affects the condition, manner, or duration in which the individual performs a major life activity, such that it constitutes a substantial limitation. The ultimate outcome of an individual's efforts should not undermine a claim of disability, even if the individual ultimately is able to achieve the same or similar result as someone without the impairment.

The Department received several comments on these provisions, with disability organizations and individuals supporting the inclusion of these provisions and some testing entities and an organization representing educational institutions opposing them. The opponents argued that academic performance and testing outcomes are objective evidence that contradict findings of disability and that covered entities must be able to focus on those outcomes in order to demonstrate whether an impairment has contributed to a substantial limitation. These commenters argued that the evidence frequently offered by those making claims of disability that demonstrate the time or effort required to achieve a result, such as evidence of self-mitigating measures, informal accommodations, or recently provided reasonable modifications, is inherently subjective and unreliable. The testing entities suggested that the Department had indicated support for their interest in focusing on outcomes over process-related obstacles in the NPRM preamble language where the Department had noted that covered entities "may defeat a showing of substantial limitation by refuting whatever evidence the individual seeking coverage has offered, or by offering evidence that shows that an impairment does not impose a substantial limitation on a major life activity." NPRM, 79 FR 4839, 4847–48 (Jan. 30, 2014). The commenters representing educational institutions and testing entities urged the removal of §§ 35.108(d)(3)(iii) and 36.105(d)(3)(iii) or, in the alternative, the insertion of language indicating that outcomes, such as grades and test scores indicating academic success, are relevant evidence that should be considered when making disability determinations.

In contrast, commenters representing persons with disabilities and individual commenters expressed strong support for these provisions, noting that what an individual can accomplish despite an impairment does not accurately reflect the obstacles an individual had to overcome because of the impairment. One organization representing persons with disabilities noted that while individuals with disabilities have achieved successes at work, in academia, and in other settings, their successes should not create obstacles to addressing what they can do "in spite of an impairment." Commenters also expressed concerns that testing entities and educational institutions had failed to comply with the rules of construction or to revise prior policies and practices to comport with the new standards under the ADA as amended. Some commenters asserted that testing entities improperly rejected accommodation requests because the testing entities focused on test scores and outcomes rather than on how individuals learn; required severe levels of impairment; failed to disregard the helpful effect of self-mitigating measures; referenced participation in extracurricular activities as evidence that individuals did not have disabilities; and argued that individuals diagnosed with specific learning disabilities or ADHD in adulthood cannot demonstrate that they have a disability because their diagnosis occurred too late.

Commenters representing persons with disabilities pointed to the discussion in the legislative history about restoring a focus on process rather than outcomes with respect to learning disabilities. They suggested that such a shift in focus also would be helpful in evaluating ADHD. One commenter asked the Department to include a reference to ADHD and to explain that persons with ADHD may achieve a high level of academic success but may nevertheless be substantially limited in one or more major life activities, such as reading, writing, speaking, concentrating, or learning. A private citizen requested the addition of examples demonstrating the application of these provisions because, in the commenter's view, there have been many problems with decisions regarding individuals with learning disabilities and an inappropriate focus on outcomes and test scores.

The Department declines the request to add a specific reference to ADHD in these provisions. The Department believes that the principles discussed above apply equally to persons with ADHD as well as individuals with other impairments. The provision already references an illustrative, but not exclusive, example of an individual with a learning disability. The Department believes that this example effectively illustrates the concern that has affected individuals with other impairments due to an inappropriate emphasis on outcomes rather than how a major life activity is limited.

Organizations representing testing and educational entities asked the Department to add regulatory language indicating that testing-related outcomes, such as grades and test scores, are relevant to disability determinations under the ADA. The Department has considered this proposal and declines to adopt it because it is inconsistent with congressional intent. As discussed earlier in this section, Congress specifically stated that the outcome an individual with a disability is able to achieve is not determinative of whether that individual has a physical or mental impairment that substantially limits a major life activity. The analysis of whether an individual with an impairment has a disability is a fact-driven analysis shaped by how an impairment has substantially limited one or more major life activities or major bodily functions, considering those specifically asserted by the individual as well as any others that may apply. For example, if an individual with ADHD seeking a reasonable modification or a testing accommodation asserts substantial limitations in the major life activities of concentrating and reading, then the analysis of whether or not that individual has a covered disability will necessarily focus on concentrating and reading. Relevant considerations could include restrictions on the conditions, manner, or duration in which the individual concentrates or reads, such as a need for a non-stimulating environment or extensive time required to read. Even if an individual has asserted that an impairment creates substantial limitations on activities such as reading, writing, or concentrating, the individual's academic record or prior standardized testing results might not be relevant to the inquiry. Instead, the individual could show substantial limitations by providing evidence of condition, manner, or duration limitations, such as the need for a reader or additional time. The Department does not believe that the testing results or grades of an individual seeking reasonable modifications or testing accommodations always would be relevant to determinations of disability. While testing and educational entities may, of course, put forward any evidence that they deem pertinent to their response to an assertion of substantial limitation, testing results and grades may be of only limited relevance.

In addition, the Department does not agree with the assertions made by testing and educational entities that evidence of testing and grades is objective and, therefore, should be weighted more heavily, while evidence of self-mitigating measures, informal accommodations, or recently provided accommodations or modifications is inherently subjective and should be afforded less consideration. Congress's discussion of the relevance of testing outcomes and grades clearly indicates that it did not consider them definitive evidence of the existence or non-existence of a disability. While tests and grades typically are numerical measures of performance, the capacity to quantify them does not make them inherently more valuable with respect to proving or disproving disability. To the contrary, Congress's incorporation of rules of construction emphasizing broad coverage of disabilities to the maximum extent permitted, its direction that such determinations should neither contemplate ameliorative mitigating measures nor demand extensive analysis, and its recognition of learned and adaptive modifications all support its openness for individuals with impairments to put forward a wide range of evidence to demonstrate their disabilities.

The Department believes that Congress made its intention clear that the ADA's protections should encompass people for whom the nature of their impairment requires an assessment that focuses on how they engage in major life activities, rather than the ultimate outcome of those activities. Beyond directly addressing this concern in the debate over the ADA Amendments Act, Congress's incorporation of the far-reaching rules of construction, its explicit rejection of the consideration of ameliorative mitigating measures—including "learned behavioral or adaptive neurological modifications," 42 U.S.C. 12102(4)(E)(i)(IV), such as those often employed by individuals with learning disabilities or ADHD—and its stated intention to "reinstat[e] a broad scope of protection to be available under the ADA," Public Law 110–325, sec. 2(b)(1), all support the language initially proposed in these provisions. For these reasons, the Department determined that it will retain the language of these provisions as they were originally drafted.

Analysis of Condition, Manner, or Duration Not Always Required

As noted in the discussion above, the Department has added §§ 35.108(d)(3)(iv) and 36.105(d)(3)(iv) in the final rule to clarify that analysis of condition, manner, or duration will not always be necessary, particularly with respect to certain impairments that can easily be found to substantially limit a major life activity. This language is also found in the EEOC ADA title I regulation. *See* 29 CFR 1630(j)(4)(iv). As noted earlier, the inclusion of these provisions addresses several comments from organizations representing persons with disabilities. This language also responds to several commenters' concerns that the Department should clarify that, in some cases and particularly with respect to predictable assessments, no or only a very limited analysis of condition, manner, or duration is necessary.

At the same time, individuals seeking coverage under the first or second prong of the definition of "disability" should not be constrained from offering evidence needed to establish that their impairment is substantially limiting. *See* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers). Such evidence may comprise facts related to condition, manner, or duration. And, covered entities may defeat a showing of substantial limitation by refuting whatever evidence the individual seeking coverage has offered, or by offering evidence that shows that an impairment does not impose a substantial limitation on a major life activity. However, a showing of substantial limitation is not defeated by facts unrelated to condition, manner, or duration that are not pertinent to the substantial limitation of a major life activity that the individual has proffered.

Sections 35.108(d)(4) and 36.105(d)(4)—Examples of Mitigating Measures

The rules of construction set forth at §§ 35.108(d)(1)(viii) and 36.105(d)(1)(viii) of the final rule make clear that the ameliorative effects of mitigating measures shall not be considered when determining whether an impairment substantially limits a major life activity. In the NPRM, proposed §§ 35.108(d)(4) and 36.105(d)(4) provided a non-inclusive list of mitigating measures, which includes medication, medical supplies, equipment, appliances, low-vision devices, prosthetics, hearing aids, cochlear implants and implantable hearing devices, mobility devices, oxygen therapy equipment, and assistive technology. In addition, the proposed regulation clarified that mitigating measures can include "learned behavioral or adaptive neurological modifications," psychotherapy, behavioral therapy, or physical therapy, and "reasonable modifications" or auxiliary aids and services.

The phrase "learned behavioral or adaptive neurological modifications," is intended to include strategies developed by an individual to lessen the impact of an impairment. The phrase "reasonable modifications" is intended to include informal or undocumented accommodations and modifications as well as those provided through a formal process.

The ADA as amended specifies one exception to the rule on mitigating measures, stating that the ameliorative effects of ordinary eyeglasses and contact lenses shall be considered in determining whether a person has an impairment that substantially limits a major life activity and thereby is a person with a disability. 42 U.S.C. 12102(4)(E)(ii). As discussed above, §§ 35.108(d)(4)(i) and 36.105(d)(4)(i) incorporate this exception by excluding ordinary eyeglasses and contact lenses from the definition of "low-vision devices," which are mitigating measures that may not be considered in determining whether an impairment is a substantial limitation.

The Department received a number of comments supporting the Department's language in these sections and its broad range of examples of what constitutes a mitigating measure. Commenters representing students with disabilities specifically supported the inclusion of "learned behavioral or adaptive neurological modifications," noting that the section "appropriately supports and highlights that students [and individuals in other settings] may have developed self-imposed ways to support their disability in order to perform major life activities required of daily life and that such measures cannot be used to find that the person is not substantially limited."

The Department notes that self-mitigating measures or undocumented modifications or accommodations for students who have impairments that substantially limit learning, reading, writing, speaking, or concentrating may include such measures as arranging to have multiple reminders for task completion; seeking help from others to provide reminders or to assist with the organization of tasks; selecting courses strategically (such as selecting courses that require papers instead of exams); devoting a far larger portion of the day, weekends, and holidays to study than students without disabilities; teaching oneself strategies to facilitate reading connected text or mnemonics to remember facts (including strategies such as highlighting and margin noting); being permitted extra time to complete tests; receiving modified homework assignments; or taking exams in a different format or in a less stressful or anxiety-provoking setting. Each of these mitigating measures, whether formal or informal, documented or undocumented, can improve the academic function of a student having to deal with a substantial limitation in a major life activity such as concentrating, reading, speaking, learning, or writing. However, when the determination of disability is made without considering the ameliorative effects of these measures, as required under the ADA as amended, these individuals still have a substantial limitation in major life activities and are covered by the ADA. *See also* discussion of §§ 35.108(d)(1) and 36.105(d)(1), above.

Some commenters argued that the Department's examples of mitigating measures inappropriately include normal learning strategies and asked that the Department withdraw or narrow its discussion of self-mitigating measures. The Department disagrees. Narrowing the discussion of self-mitigating measures to exclude normal or common strategies would not be consistent with the ADA Amendments Act. The Department construes learned behavioral or adaptive neurological modifications broadly to include strategies applied or utilized by an individual with a disability to lessen the effect of an impairment; whether the strategy applied is normal or common to students without disabilities is not relevant to whether an individual with a disability's application of the strategy lessens the effect of an impairment.

An additional commenter asked the Department to add language to the regulation and preamble addressing mitigating measures an individual with ADHD may employ. This commenter noted that "[a]n individual with ADHD may employ a wide variety of self-mitigating measures, such as exertion of extensive extra effort, use of multiple reminders, whether low tech or high tech, seeking a quiet or distraction free place or environment to do required activities." The Department agrees with this commenter that these are examples of the type of self-mitigating measures used by individuals with ADHD, but believes that they fall within the range of mitigating measures already addressed by the regulatory language.

Another commenter asked the Department to add language to the regulation or preamble addressing surgical interventions in a similar fashion to the approach taken in the EEOC's title I preamble, 76 FR 16978, 16983 (Mar. 25, 2011). There, the EEOC noted that a surgical intervention may be an ameliorative mitigating measure that could result in the permanent elimination of an impairment, but it also indicated that confusion about how this example might apply recommended against its inclusion in the regulatory text. Therefore, the EEOC eliminated that example from the draft regulatory text and recommended that, "[d]eterminations about whether surgical interventions should be taken into consideration when assessing whether an individual has a disability are better assessed on a case-by-case basis." The Department agrees with the EEOC and underscores that surgical interventions may constitute mitigating measures that should not be considered in determining whether an individual meets the definition of "disability." The Department declines to make any changes to its proposed regulatory text for these sections of the final rule.

The ADA Amendments Act provides an "illustrative but non-comprehensive list of the types of mitigating measures that are not to be considered." 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers) at 9; *see also* H.R. Rep. No. 110–730, pt. 2, at 20 (2008). The absence of any particular mitigating measure should not convey a negative implication as to whether the measure is a mitigating measure under the ADA. *Id.* This principle applies equally to the non-exhaustive list in §§ 35.108(d)(4) and 36.105(d)(4).

Sections 35.108(e) and 36.105(e)—Has a Record of Such an Impairment

The second prong of the definition of "disability" under the ADA provides that an individual with a record of an impairment that substantially limits or limited a major life activity is an individual with a disability. 42 U.S.C. 12102(1)(B).

Paragraph (3) of the definition of "disability" in the existing title II and title III regulations states that the phrase "has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. 28 CFR 35.104, 36.104. The NPRM proposed keeping the language in the title II and title III regulations (with minor editorial changes) but to renumber it as §§ 35.108(e)(1) and 36.105(e)(1). In addition, the NPRM proposed adding a new second paragraph stating that any individual's assertion of a record of impairment that substantially limits a major life activity should be broadly construed to the maximum extent permitted by the ADA and should not require extensive analysis. If an individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population or was misclassified as having had such an impairment, then that individual will satisfy the third prong of the definition of "disability." The NPRM also proposed adding paragraph (3), which provides that "[a]n individual with a record of a substantially limiting impairment may be entitled to a reasonable modification if needed and related to the past disability."

The Department received no comments objecting to its proposed language for these provisions and has retained it in the final rule. The Department received one comment requesting additional guidance on the meaning of these provisions. The Department notes that Congress intended this prong of the definition of "disability" to ensure that people are not discriminated against based on prior medical history. This prong is also intended to ensure that individuals are not discriminated against because they have been misclassified as an individual with a disability. For example, individuals misclassified as having learning disabilities or intellectual disabilities are protected from discrimination on the basis of that erroneous classification. *See* H.R. Rep. No. 110–730, pt. 2, at 7–8 & n.14 (2008).

This prong of the definition is satisfied where evidence establishes that an individual has had a substantially limiting impairment. The impairment indicated in the record must be an impairment that would substantially limit one or more of the individual's major life activities. The terms "substantially limits" and "major life activity" under the second prong of the definition of "disability" are to be construed in accordance with the same principles applicable under the "actual disability" prong, as set forth in §§ 35.108(b) and 36.105(b).

There are many types of records that could potentially contain this information, including but not limited to, education, medical, or employment records. The Department notes that past history of an impairment need not be reflected in a specific document. Any evidence that an individual has a past history of an impairment that substantially limited a major life activity is all that is necessary to establish coverage under the second prong. An individual may have a "record of" a substantially limiting impairment—and thus establish coverage under the "record of" prong of the statute—even if a covered entity does not specifically know about the relevant record. For the covered entity to be liable for discrimination under the ADA, however, the individual with a "record of" a substantially limiting impairment must prove that the covered entity discriminated on the basis of the record of the disability.

Individuals who are covered under the "record of" prong may be covered under the first prong of the definition of "disability" as well. This is because the rules of construction in the ADA Amendments Act and the Department's regulations provide that an individual with an impairment that is episodic or in remission can be protected under the first prong if the impairment would be substantially limiting when active. *See* §§ 35.108(d)(1)(iv); 36.105(d)(1)(iv). Thus, an individual who has cancer that is currently in remission is an individual with a disability under the "actual disability" prong because he has an impairment that would substantially limit normal cell growth when active. He is also covered by the "record of" prong based on his history of having had an impairment that substantially limited normal cell growth.

Finally, these provisions of the regulations clarify that an individual with a record of a disability is entitled to a reasonable modification currently needed relating to the past substantially limiting impairment. In the legislative history, Congress stated that reasonable modifications were available to persons covered under the second prong of the definition. *See* H.R. Rep. No. 110–730, pt. 2, at 22 (2008) ("This makes clear that the duty to accommodate . . . arises only when an individual establishes coverage under the first or second prong of the definition."). For example, a high school student with an impairment that previously substantially limited, but no longer substantially limits, a major life activity may need permission to miss a class or have a schedule change as a reasonable modification that would permit him or her to attend follow-up or monitoring appointments from a health care provider.

Sections 35.108(f) and 36.105(f)—Is Regarded as Having Such an Impairment

The "regarded as having such an impairment" prong of the definition of "disability" was included in the ADA specifically to protect individuals who might not meet the first two prongs of the definition, but who were subject to adverse decisions by covered entities based upon unfounded concerns, mistaken beliefs, fears, myths, or prejudices about persons with disabilities. *See* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers). The rationale for the "regarded as" part of the definition of "disability" was articulated by the Supreme Court in the context of section 504 of the Rehabilitation Act of 1973 in *School Board of Nassau County* v. *Arline,* 480 U.S. 273 (1987). In *Arline,* the Court noted that, although an individual may have an impairment that does not diminish his or her physical or mental capabilities, it could "nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." *Id.* at 283. Thus, individuals seeking the protection of the ADA under the "regarded as" prong only had to show that a covered entity took some action prohibited by the statute because of an actual or perceived impairment. At the time of the *Arline* decision, there was no requirement that the individual demonstrate that he or she, in fact, had or was perceived to have an impairment that substantially limited a major life activity. *See* 154 Cong. Rec. S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers). For example, if a daycare center refused to admit a child with burn scars because of the presence of the scars, then the daycare center regarded the child as an individual with a disability, regardless of whether the child's scars substantially limited a major life activity.

In *Sutton* v. *United Air Lines, Inc.,* 527 U.S. 471 (1999), the Supreme Court significantly narrowed the application of this prong, holding that individuals who asserted coverage under the "regarded as having such an impairment" prong had to establish either that the covered entity mistakenly believed that the individual had a physical or mental impairment that substantially limited a major life activity, or that the covered entity mistakenly believed that "an actual, nonlimiting impairment substantially limit[ed]" a major life activity, when in fact the impairment was not so limiting. *Id.* at 489. Congress expressly rejected this standard in the ADA Amendments Act by amending the ADA to clarify that it is sufficient for an individual to establish that the covered entity regarded him or her as having an impairment, regardless of whether the individual actually has the impairment or whether the impairment constitutes a disability under the Act. 42 U.S.C. 12102(3)(A). This amendment restores Congress's intent to allow individuals to establish coverage under the "regarded as" prong by showing that they were treated adversely because of an actual or perceived impairment without having to establish the covered entity's beliefs concerning the severity of the impairment. *See* H.R. Rep. No. 110–730, pt. 2, at 18 (2008).

Thus, under the ADA as amended, it is not necessary, as it was prior to the ADA Amendments Act and following the Supreme Court's decision in *Sutton,* for an individual to demonstrate that a covered entity perceived him as substantially limited in the ability to perform a major life activity in order for the individual to establish that he or she is covered under the "regarded as" prong. Nor is it necessary to demonstrate that the impairment relied on by a covered entity is (in the case of an actual impairment) or would be (in the case of a perceived impairment) substantially limiting for an individual to be "regarded as having such an impairment." In short, to be covered under the "regarded as" prong, an individual is not subject to any functional test. *See* 154 Cong. Rec. S8843 (daily ed. Sept. 16, 2008) (Statement of the Managers) ("The functional limitation imposed by an impairment is irrelevant to the third 'regarded as' prong."); H.R. Rep. No. 110–730, pt. 2, at 17 (2008) ("[T]he individual is not required to show that the perceived impairment limits performance of a major life activity.") The concepts of "major life activities" and "substantial limitation" simply are not relevant in evaluating whether an individual is "regarded as having such an impairment."

In the NPRM, the Department proposed §§ 35.108(f)(1) and 36.105(f)(1), which are intended to restore the meaning of the "regarded as" prong of the definition of "disability" by adding language that incorporates the amended statutory provision: "An individual is 'regarded as having such an impairment' if the individual is subjected to an action prohibited by the ADA because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity, except for an impairment that is both transitory and minor."

The proposed provisions also incorporate the statutory definition of transitory impairment, stating that a "transitory impairment is an impairment with an actual or expected duration of six months or less." The "transitory and minor" exception was not in the third prong in the original statutory definition of "disability." Congress added this exception to address concerns raised by the business community that "absent this exception, the third prong of the definition would have covered individuals who are regarded as having common ailments like the cold or flu." *See* H.R. Rep. No. 110–730, pt. 2, at 18 (2008). However, as an exception to the general rule for broad coverage under the "regarded as" prong, this limitation on coverage should be construed narrowly. *Id.* The ADA Amendments Act did not define "minor."

In addition, proposed §§ 35.108(f)(2) and 36.105(f)(2) stated that any time a public entity or covered entity takes a prohibited action because of an individual's actual or perceived impairment, even if the entity asserts, or may or does ultimately establish, a defense to such action, that individual is "regarded as" having such an impairment. Commenters on these provisions recommended that the Department revise its language to clarify that the determination of whether an impairment is in fact "transitory and minor" is an objective determination and that a covered entity may not defeat "regarded as" coverage of an individual simply by demonstrating that it subjectively believed that the impairment is transitory and minor. In addition, a number of commenters cited the EEOC title I rule at 29 CFR 1630.15(f) and asked the Department to clarify that "the issue of whether an actual or perceived impairment is 'transitory and minor' is an affirmative defense and not part of the plaintiff's burden of proof." The Department agrees with these commenters and has revised paragraphs (1) and (2) of these sections for clarity, as shown in §§ 35.108(f)(2) and 36.105(f)(2) of the final rule.

The revised language makes clear that the relevant inquiry under these sections is whether the actual or perceived impairment that is the basis of the covered entity's action is objectively "transitory and minor," not whether the covered entity claims it subjectively believed the impairment was transitory and minor. For example, a private school that expelled a student whom it believes has bipolar disorder cannot take advantage of this exception by asserting that it believed the student's impairment was transitory and minor, because bipolar disorder is not objectively transitory and minor. Similarly, a public swimming pool that refused to admit an individual with a skin rash, mistakenly believing the rash to be symptomatic of HIV, will have "regarded" the individual as having a disability. It is not a defense to coverage that the skin rash was objectively transitory and minor because the covered entity took the prohibited action based on a perceived impairment, HIV, that is not transitory and minor.

The revised regulatory text also makes clear that the "transitory and minor" exception to a "regarded as" claim is a defense to a claim of discrimination and not part of an individual's prima facie case. The

Department reiterates that to fall within this exception, the actual or perceived impairment must be *both* transitory (less than six months in duration) *and* minor. For example, an individual with a minor back injury could be "regarded as" an individual with a disability if the back impairment lasted or was anticipated to last more than six months. The Department notes that the revised regulatory text is consistent with the EEOC rule which added the transitory and minor exception to its general affirmative defense provision in its title I ADA regulation at 29 CFR 1630.15(f). Finally, in the NPRM, the Department proposed §§ 35.108(f)(3) and 36.105(f)(3) which provided that an individual who is "regarded as having such an impairment" does not establish liability based on that alone. Instead, an individual can establish liability only when an individual proves that a private entity or covered entity discriminated on the basis of disability within the meaning of the ADA. This provision was intended to make it clear that in order to establish liability, an individual must establish coverage as a person with a disability, as well as establish that he or she had been subjected to an action prohibited by the ADA.

The Department received no comments on the language in these paragraphs. Upon consideration, in the final rule, the Department has decided to retain the regulatory text for §§ 35.108(f)(3) and 36.105(f)(3) except that the reference to "covered entity" in the title III regulatory text is changed to "public accommodation."

Sections 35.108(g) and 36.105(g)—Exclusions

The NPRM did not propose changes to the text of the existing exclusions contained in paragraph (5) of the definition of "disability" in the title II and title III regulations, *see* 28 CFR 35.104, 36.104, which are based on 42 U.S.C. 12211(b), a statutory provision that was not modified by the ADA Amendments Act. The NPRM did propose to renumber these provisions, relocating them at §§ 35.108(g) and 36.105(g) of the Department's revised definition of "disability." The Department received no comments on the proposed renumbering, which is retained in the final rule.

Sections 35.130(b)(7)(i)—General Prohibitions Against Discrimination and 36.302(g)—Modifications in Policies, Practices, or Procedures

The ADA Amendments Act revised the ADA to specify that a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, "need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability" solely on the basis of being regarded as having an impairment. 42 U.S.C. 12201(h). In the NPRM, the Department proposed §§ 35.130(b)(7)(i) and 36.302(g) to reflect this concept, explaining that a public entity or covered entity "is not required to provide a reasonable modification to an individual who meets the definition of disability solely under the 'regarded as' prong of the definition of disability." These provisions clarify that the duty to provide reasonable modifications arises only when the individual establishes coverage under the first or second prong of the definition of "disability." These provisions are not intended to diminish the existing obligations to provide reasonable modifications under title II and title III of the ADA.

The Department received no comments associated with these provisions and retains the NPRM language in the final rule except for replacing the words "covered entity" with "public accommodation" in § 36.302(g).

Sections 35.130(i) and 36.201(c)—Claims of No Disability

The ADA as amended provides that "[n]othing in this [Act] shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability." 42 U.S.C. 12201(g). In the NPRM the Department proposed adding §§ 35.130(*i*) and 36.201(c) to the title II and title III regulations, respectively, which incorporate similar language. These provisions clarify that persons without disabilities do not have an actionable claim under the ADA on the basis of not having a disability.

The Department received no comments associated with this issue and has retained these provisions in the final rule.

Effect of ADA Amendments Act on Academic Requirements in Postsecondary Education

The Department notes that the ADA Amendments Act revised the rules of construction in title V of the ADA by including a provision affirming that nothing in the Act changed the existing ADA requirement that covered entities provide reasonable modifications in policies, practices, or procedures unless the entity can demonstrate that making such modifications, including academic requirements in postsecondary education, would fundamentally alter the nature of goods, services, facilities, privileges, advantages, or accommodations involved. *See* 42 U.S.C. 12201(f). Congress noted that the reference to academic requirements in postsecondary education was included "solely to provide assurances that the bill does not alter current law with regard to the obligations of academic institutions under the ADA, which we believe is already demonstrated in case law on this topic. Specifically, the reference to academic standards in post-secondary education is unrelated to the purpose of this legislation and should be given no meaning in interpreting the definition of disability." 154 Cong. Rec. S8843 (daily ed. Sept. 16, 2008) (Statement of the Managers). Given that Congress did not intend there to be any change to the law in this area, the Department did not propose to make any changes to its regulatory requirements in response to this provision of the ADA Amendments Act.

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

■ 7. Revise the authority citation for part 36 to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b) and 12205a.

■ 8. Revise § 36.101 to read as follows:

§ 36.101 Purpose and broad coverage.

(a) *Purpose.* The purpose of this part is to implement subtitle A of title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181–12189), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub. L. 110–325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by covered public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

(b) *Broad coverage.* The primary purpose of the ADA Amendments Act is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the ADA Amendments Act's purpose of reinstating a broad scope of protection under the ADA, the definition of "disability" in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of "disability." The question of whether an individual meets the definition of "disability" under this part should not demand extensive analysis.

■ 9. Amend § 36.104 by revising the definition of "Disability" to read as follows:

§ 36.104 Definitions.

* * * * *

Disability. The definition of *disability* can be found at § 36.105.

* * * * *

■ 10. Add § 36.105 to subpart A to read as follows:

§ 36.105 Definition of "disability."

(a)(1) *Disability* means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment as described in paragraph (f) of this section.

(2) *Rules of construction.* (i) The definition of "disability" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.

(ii) An individual may establish coverage under any one or more of the three prongs of the definition of "disability" in paragraph (a)(1) of this section, the "actual disability" prong in paragraph (a)(1)(i) of this section, the "record of" prong in paragraph (a)(1)(ii) of this section, or the "regarded as" prong in paragraph (a)(1)(iii) of this section.

(iii) Where an individual is not challenging a public accommodation's failure to provide reasonable modifications under § 36.302, it is generally unnecessary to proceed under the "actual disability" or "record of" prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the "regarded as" prong of the definition of "disability," which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. An individual may choose, however, to proceed under the "actual disability" or "record of" prong regardless of whether the individual is challenging a public accommodation's failure to provide reasonable modifications.

(b)(1) *Physical or mental impairment* means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

(2) *Physical or mental impairment* includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: Orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(3) *Physical or mental impairment* does not include homosexuality or bisexuality.

(c)(1) *Major life activities* include, but are not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(ii) The operation of a *major bodily function,* such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

(2) *Rules of construction.* (i) In determining whether an impairment substantially limits a major life activity, the term *major* shall not be interpreted strictly to create a demanding standard.

(ii) Whether an activity is a *major life activity* is not determined by reference to whether it is of *central* importance to daily life.

(d) *Substantially limits*—(1) *Rules of construction.* The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity.

(i) The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. "Substantially limits" is not meant to be a demanding standard.

(ii) The primary object of attention in cases brought under title III of the ADA should be whether public accommodations have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.

(iii) An impairment that substantially limits one major life activity does not need to limit other major life activities in order to be considered a substantially limiting impairment.

(iv) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(v) An impairment is a disability within the meaning of this part if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(vi) The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for substantially limits applied prior to the ADA Amendments Act.

(vii) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence. Nothing in this paragraph (d)(1) is intended, however, to prohibit or limit the presentation of scientific, medical, or statistical evidence in making such a comparison where appropriate.

(viii) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(ix) The six-month "transitory" part of the "transitory and minor" exception in paragraph (f)(2) of this section does not apply to the "actual disability" or "record of" prongs of the definition of "disability." The effects of an impairment lasting or expected to last less than six months can be substantially limiting within the meaning of this section for establishing an actual disability or a record of a disability.

(2) *Predictable assessments.* (i) The principles set forth in the rules of

construction in this section are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities under the ADA.

(ii) Applying these principles, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraph (a)(1)(i) of this section (the "actual disability" prong) or paragraph (a)(1)(ii) of this section (the "record of" prong). Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(iii) For example, applying these principles it should easily be concluded that the types of impairments set forth in paragraphs (d)(2)(iii)(A) through (K) of this section will, at a minimum, substantially limit the major life activities indicated. The types of impairments described in this paragraph may substantially limit additional major life activities (including major bodily functions) not explicitly listed in paragraphs (d)(2)(iii)(A) through (K).

(A) Deafness substantially limits hearing;

(B) Blindness substantially limits seeing;

(C) Intellectual disability substantially limits brain function;

(D) Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function;

(E) Autism substantially limits brain function;

(F) Cancer substantially limits normal cell growth;

(G) Cerebral palsy substantially limits brain function;

(H) Diabetes substantially limits endocrine function;

(I) Epilepsy, muscular dystrophy, and multiple sclerosis each substantially limits neurological function;

(J) Human Immunodeficiency Virus (HIV) infection substantially limits immune function; and

(K) Major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each substantially limits brain function.

(3) *Condition, manner, or duration.*(i) At all times taking into account the principles set forth in the rules of construction, in determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the conditions under which the individual performs the major life activity; the manner in which the individual performs the major life activity; or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

(ii) Consideration of facts such as condition, manner, or duration may include, among other things, consideration of the difficulty, effort or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; or the way an impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(iii) In determining whether an individual has a disability under the "actual disability" or "record of" prongs of the definition of "disability," the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population.

(iv) Given the rules of construction set forth in this section, it may often be unnecessary to conduct an analysis involving most or all of the facts related to condition, manner, or duration. This is particularly true with respect to impairments such as those described in paragraph (d)(2)(iii) of this section, which by their inherent nature should be easily found to impose a substantial limitation on a major life activity, and for which the individualized assessment should be particularly simple and straightforward.

(4) *Mitigating measures* include, but are not limited to:

(i) Medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) Reasonable modifications or auxiliary aids or services as defined in this regulation;

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(e) *Has a record of such an impairment.* (1) An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(2) *Broad construction.* Whether an individual has a record of an impairment that substantially limited a major life activity shall be construed broadly to the maximum extent permitted by the ADA and should not demand extensive analysis. An individual will be considered to fall within this prong of the definition of "disability" if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a major life activity, the principles articulated in paragraph (d)(1) of this section apply.

(3) *Reasonable modification.* An individual with a record of a substantially limiting impairment may be entitled to a reasonable modification if needed and related to the past disability.

(f) *Is regarded as having such an impairment.* The following principles apply under the "regarded as" prong of the definition of "disability" (paragraph (a)(1)(iii) of this section):

(1) Except as set forth in paragraph (f)(2) of this section, an individual is "regarded as having such an impairment" if the individual is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity, even if the public accommodation asserts, or may or does ultimately establish, a defense to the action prohibited by the ADA.

(2) An individual is not "regarded as having such an impairment" if the public accommodation demonstrates that the impairment is, objectively, both

"transitory" and "minor." A public accommodation may not defeat "regarded as" coverage of an individual simply by demonstrating that it subjectively believed the impairment was transitory and minor; rather, the public accommodation must demonstrate that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment), objectively, both "transitory" and "minor." For purposes of this section, "transitory" is defined as lasting or expected to last six months or less.

(3) Establishing that an individual is "regarded as having such an impairment" does not, by itself, establish liability. Liability is established under title III of the ADA only when an individual proves that a public accommodation discriminated on the basis of disability within the meaning of title III of the ADA, 42 U.S.C. 12181–12189.

(g) *Exclusions.* The term "disability" does not include—

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

Subpart B—General Requirements

■ 11. Amend § 36.201 by adding paragraph (c) to read as follows:

§ 36.201 General.

* * * * *

(c) *Claims of no disability.* Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability.

Subpart C—Specific Requirements

■ 12. Amend § 36.302 by adding paragraph (g) to read as follows:

§ 36.302 Modifications in policies, practices, or procedures.

* * * * *

(g) *Reasonable modifications for individuals "regarded as" having a disability.* A public accommodation is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of "disability" at § 36.105(a)(1)(iii).

* * * * *

■ 13. Add appendix E to part 36 to read as follows:

Appendix E—Guidance to Revisions to ADA Title II and Title III Regulations Revising the Meaning and Interpretation of the Definition of "disability" and Other Provisions in Order To Incorporate the Requirements of the ADA Amendments Act

For guidance providing a section-by-section analysis of the revisions to 28 CFR parts 35 and 36 published on August 11, 2016, see appendix C of 28 CFR part 35.

Dated: July 15, 2016.

Loretta E. Lynch,

Attorney General.

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